# MONTANA
# DEPARTMENT OF NATURAL RESOURCES & CONSERVATION


# STATE LAND
# SURFACE MANAGEMENT RULES AND POLICIES
# MAY 2005

# DEPARTMENT OF NATURAL RESOURCES & CONSERVATION
# TRUST LAND MANAGEMENT OFFICES

| Main Office | City | Phone # |
|---|---|---|
| 1625 11th Avenue | Helena | 444-2074 |
| | | |
| Forestry Office | | |
| 2705 Spurgin Road | Missoula | 542-4300 |
| | | |
| Central Area | | |
| Central Land Office | Helena | 458-3500 |
| Helena Unit Office | Helena | 458-3500 |
| Bozeman Unit Office | Bozeman | 586-5243 |
| Conrad Unit Office | Conrad | 278-7869 |
| Dillon Unit Office | Dillon | 683-6305 |
| | | |
| Eastern Area | | |
| Eastern Land Office | Miles City | 232-2034 |
| | | |
| Northeastern Area | | |
| Northeastern Land Office | Lewistown | 538-7789 |
| Glasgow Unit Office | Glasgow | 228-2430 |
| Havre Unit Office | Havre | 265-5236 |
| Lewistown Unit Office | Lewistown | 538-7789 |
| | | |
| Northwestern Area | | |
| Northwestern Land Office | Kalispell | 751-2240 |
| Kalispell Unit Office | Kalispell | 751-2286 |
| Libby Unit Office | Libby | 293-2711 |
| Plains Unit Office | Plains | 826-5785 |
| Stillwater Unit Office | Olney | 881-2371 |
| Swan River Unit Office | Swan Lake | 754-2301 |
| | | |
| Southern Area | | |
| Southern Land Office | Billings | 247-4400 |
| | | |
| Southwestern Area | | |
| Southwestern Land Office | Missoula | 542-4200 |
| Missoula Unit Office | Missoula | 542-4201 |
| Hamilton Unit Office | Hamilton | 363-1585 |
| Clearwater Unit Office | Greenough | 244-5877 |
| Anaconda Unit Office | Anaconda | 563-6078 |

STATE LAND LEASING

**POLICIES**

36.2.1003 SCHEDULE OF FEES The department of natural resources and conservation shall collect the following non-refundable administrative fees:

| | |
|---|---|
| (1) Grazing/Agriculture Lease Application | $25.00 |
| (2) Grazing/Agriculture Lease Assignment | 50.00 |
| (3) Grazing/Agriculture Sublease Application | 25.00 |
| (4) Grazing/Agriculture Collateral Assignment | 25.00 |
| (5) Grazing/Agriculture Lease Renewal Application | 25.00 |
| (6) Seismic Permit Application | 50.00 |
| (7) Oil and Gas Lease Application | 15.00 |
| (8) Oil and Gas Lease Issuance | 25.00 |
| (9) Oil and Gas Lease Assignment | 25.00 |
| (10) Oil and Gas Unit Agreement Issuance | 25.00 |
| (11) All other Mineral Lease Application | 50.00 |
| (12) All other Mineral Lease Renewal Application | 25.00 |
| (13) All other Mineral Lease Assignments | 50.00 |
| (14) Sand, Gravel, et al Permit Application | 25.00 |
| (15) Geothermal Lease Application | 25.00 |
| (16) Geothermal Lease Renewal Application | 25.00 |
| (17) Geothermal Lease Assignment | 25.00 |
| (18) Homesite/Cabinsite Lease Application | 25.00 |
| (19) Homesite/Cabinsite Lease Renewal Application | 25.00 |
| (20) Homesite/Cabinsite Lease Assignment | 25.00 |
| (21) Commercial Lease Application | 50.00 |
| (22) Commercial Lease Renewal | 50.00 |
| (23) Commercial Lease Assignment | 50.00 |
| (24) Special Land Use License Application | 25.00 |
| (25) Special Land Use License Assignment | 25.00 |
| (26) Special Land Use License Renewal | 25.00 |
| (27) Private Land Exchange Application | 100.00 |
| (28) Land Sale Application | 100.00 |
| (29) Land Sale Contract Issuance | 50.00 |
| (30) Land Sale Patent Issuance | 50.00 |
| (31) Land Sale Assignment (Contract or Patent) | 50.00 |
| (32) Land Sale Reinstatement | 50.00 |
| (33) Easement Application | 50.00 |
| (34) Easement Assignment | 50.00 |
| (35) Certified Copy of Original | 10.00 |
| (36) Other copies documents (per page) | 1.00 |
| (37) Computer charges $10.00 minimum or Actual Cost plus 10% handling. | |
| (38) Pasturing Agreement Application | 25.00 |

(History: 2-4-201, 77-1-302, MCA; IMP, 77-1-302, MCA; Eff. 12/31/72; AMD, 1985 MAR p. 1622, Eff. 11/1/85; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, from DSL, 1996 MAR p. 771.)

**State Forest Land Management**

36.11.401 ACCOUNTABLE PARTIES (1) The trust land management division of the department of natural resources and conservation shall implement the rules as outlined in this sub-chapter to provide field personnel with consistent policy, direction, and guidance for the management of forested state trust lands. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW Eff. 3/14/03.)

36.11.402 GENERAL APPLICABILITY (1) The state forest land management rules, 36.11.403 through 36.11.450, shall apply to forest management activities on all forested state trust lands administered by the department.

(2) The department shall not require that 36.11.403 through 36.11.450 be implemented on projects that, prior to the adoption of the rules, have gone through the MEPA public scoping process, except the department shall review those timber sales where old growth was proposed for harvesting that were developed using the state forest land management plan biodiversity guidance of 1998 to ensure compliance with 36.11.404 through 36.11.429. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW Eff. 3/14/03.)

36.11.403 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) "Abandoned road" means a road that is permanently closed because it is not intended for use for future forest management activities or motorized vehicles and is left in a condition that provides adequate stability and surface drainage without periodic maintenance.

(2) "Active bald eagle nest" means any bald eagle nest that either:

(a) is known to be occupied by a breeding pair; or

(b) has been occupied by nesting bald eagles within the past five years.

(3) "Adjacent wetland" means a wetland located within a streamside management zone established under ARM 36.11.302. Adjacent wetlands are located immediately adjacent to streams, lakes or other bodies of water.

(4) "Administrative" unit means the full set of lands managed and administered by an individual field office.

(5) "Administrative use" means any activities associated with project preparation, planting, pre-commercial thinning, project administration, forest inventory, monitoring, salvage, prescribed burning, slash disposal, on-site license or lease administration, and maintenance activities.

(6) "Bald eagle home range" means a circular area having a radius of 2.5 miles around all nest sites that have been active within five years or as defined in a bald eagle site-specific plan.

(7) "Bald eagle nest site area" means a circular area having a radius of 0.25 mile around active or alternate nests that have been active within five years or as defined in a bald eagle site-specific plan.

(8) "Bald eagle primary use area" means the circular area extending from 0.25 mile to 0.5 mile from active and alternate nests or as defined in a bald eagle site-specific plan. The exact configuration of this area may be altered upon consultation with a department biologist, if geographic conditions allow. The intention is to best approximate the area frequented by nesting eagles. Lacking other data or consultation, the 0.25 to 0.5 mile area shall be used.

(9) "Bald eagle site-specific plan" means a site-specific plan for isolated breeding areas or unique situations that are developed for resolution of conflicts. Such plans are completed only after an intensive research effort designed to determine home range, activity patterns, perch and roost areas, food habits, foraging areas, and responses to human activity of specific pairs.

(10) "Bear management unit or BMU" means a geographic analysis area previously designated by an interagency technical committee which is meant to accommodate the year long habitat needs of both male and female grizzly bears.

(11) "Best management practices or BMP's" means a practice or set of practices adopted and prescribed by the state of Montana as the most effective and practical means of providing minimum water quality protection for forestry operations.

(12) "Black-backed woodpecker habitat" means fire-killed stands of trees greater than 40 acres, less than five years since disturbance, and with greater than 40 trees per acre that are greater than or equal to nine inches DBH.

(13) "Broadcast burning" means spreading fire through a continuous fuel cover. The fuels consist of slash resulting from forest practices, surface litter, and duff. Fuels are left in place, fairly uniform, and ignited under certain conditions with the intent to meet planned management objectives in the desired area.

(14) "Categorical exclusion" refers to a type of action that does not individually, collectively, or cumulatively require an environmental assessment or environmental impact statement unless extraordinary circumstances occur.

(15) "Class 1 stream segment" means:

(a) a portion of stream that supports fish; or

(b) a portion of stream that:

(i) normally has surface flow during six months of the year or more; and

(ii) contributes surface flow to another stream, lake or other body of water.

(16) "Class 2 stream segment" means a portion of a stream that is not a class 1 or class 3 stream segment. Two common examples of class 2 stream segments are:

(a) a portion of stream that:

(i) does not support fish;

(ii) normally has surface flow during less than six months of the year; and

(iii) contributes surface flow to another stream, lake or other body of water; or

(b) a portion of stream that:

(i) does not support fish;

(ii) normally has surface flow during six months of the year or more; and

(iii) does not contribute to another stream, lake or other body of water.

(17) "Class 3 stream segment" means:

(a) a portion of a stream that does not support fish;

(b) normally has surface flow during less than six months of the year; and

(18) "Coarse filter" means an approach that supports diverse wildlife habitat by managing for a variety of forest structures and compositions, instead of focusing on habitat needs for individual, selected species. A coarse filter approach assumes that if landscape patterns and processes similar to those species evolved with are maintained, then the full complement of species will persist and biodiversity will be maintained.

(19) "Coarse woody debris or CWD" means dead woody material such as stems or limbs, generally larger than three inches in diameter.

(20) "Connectivity" means:

(a) the extent to which conditions exist or should be provided between separate forest areas to ensure habitat for breeding, feeding, or movement of wildlife and fish within their home range or migration areas; or

(b) regarding management of lynx and fisher habitat, stand conditions where sapling, pole, mature, or old stands possess greater than 39% crown canopy closure, in a patch greater than 300 feet wide.

(21) "Cover type" means a descriptor of forest stands based upon tree species composition.

(22) "Denning period" (grizzly bear) means the period from November 16 through March 31.

(23) "Department" means the department of natural resources and conservation.

(24) "Desired future condition" means the land or resource conditions that will exist if goals and objectives are fully achieved. It is considered synonymous with appropriate conditions.

(25) "Diameter at breast height or DBH" means the diameter of the stem of a tree measured at 4.5 feet from the ground.

(26) "Facultative plants" means plants that are equally likely to occur in wetlands and non-wetlands (34 to 66% estimated probability).

(27) "Facultative wetland plants" means plants that usually occur in wetlands (67 to 99% estimated probability) but are occasionally found in non-wetlands.

(28) "Flammulated owl preferred habitat types" means regionally accepted climax vegetation classifications denoted by the following acronyms:

(a) PIPO (Pinus ponderosa)-all types;

(b) PSME (Pseudotsuga menziesii)/AGSP (Agropyron spicatum);

(c) PSME/FEID (Festuca idahoensis);

(d) PSME/FESC (Festuca scabrella);

(e) PSME/SYAL (Symphoricarpos albus);

(f) PSME/PHMA (Physocarpus malvaceus);

(g) PSME/VACA (Vaccinium caespitosum);

(h) PSME/CARU (Calamagrostis rubescens);

(i) PSME/SPBE (Spiraea betulifolia); and

(j) PSME/ARUV (Arctostaphylos uva-ursi).

(29) "Forest management activities" means activities or operations normally associated with the management of department administered forest land including:

(a) timber harvest;

(b) salvage harvest;

(c) thinning;

(d) control and disposal of slash;

(e) prescribed burning;

(f) site preparation;

(g) reforestation;

(h) weed control;

(i) road construction;

(j) road maintenance;

(k) inventory;

(l) monitoring; and

(m) grazing of classified forest lands.

(30) "Grizzly BMU sub-unit" means an administrative area designation related to grizzly bear recovery that approximates the home range size of a female grizzly bear.

(31) "Habitat type group or HTG" means a collection of land areas potentially capable of producing similar plant communities at climax, generally named for the predicted climax community type.

(32) "Hiding cover" means vegetation that provides visual screening capable of obstructing from view 90% of an adult grizzly bear at 200 feet.

(33) "Human activity (high intensity)" means any human use or activity associated with:

(a) frequent and/or intensive public recreation;

(b) heavy equipment use;

(c) aerial yarding;

(d) blasting;

(e) logging;

(f) log hauling;

(g) pre-commercial thinning;

(h) road construction;

(i) site alteration; or

(j) site development.

(34) "Human activity (low intensity)" means any minor human use or activity associated with:

(a) dispersed and/or infrequent public recreation;

(b) project preparation;

(c) short-duration activities associated with site alteration or site development; and

(d) planting.

(35) "Hydric soils" means soils that are formed under conditions of:

(a) saturation;

(b) flooding; or

(c) ponding long enough during the growing season to develop anaerobic conditions in the upper soil horizons.

(36) "Investments" means the department's internal investments in forested state trust lands. These investments may include items such as:

(a) silvicultural prescriptions;

(b) road construction and maintenance;

(c) plantation establishment and maintenance;

(d) wildlife habitat structures; and

(e) public recreation.

(37) "Isolated wetland" means a wetland that does not intercept or lie within a SMZ boundary.

(38) "Lake" means a body of water:

(a) where the surface water is retained by either natural or artificial means;

(b) where the natural flow of water is substantially impeded; and

(c) which supports fish.

(39) "Lynx denning habitat" means mature forest within lynx habitat with numerous downed logs occurring in at least five-acre patches. Younger successional stages offer denning habitat where CWD amounts are high, such as areas with extensive timber blow down.

(40) "Lynx habitat" means forest lands comprised of subalpine fir or hemlock habitat types, and moist Douglas-fir, grand fir, western red cedar, and engelmann spruce habitat types where they are intermixed with appreciable amounts of subalpine fir habitat types. Cover types may be mixed species composition (subalpine fir, hemlock, engelmann spruce, Douglas-fir, grand fir, western larch, lodgepole pine and hardwoods), and stands dominated by lodgepole pine.

(41) "Lynx non-habitat" means:

(a) definable winter ranges normally used by high concentrations of big game animals and associated predators regardless of habitat type; or

(b) the following habitat types:

(i) ponderosa pine and dry Douglas-fir;

(ii) limber pine;

(iii) whitebark pine;

(iv) water;

(v) rock; and

(vi) permanent non-forest areas.

(42) "Mature foraging habitat (lynx)" means sawtimber stands within lynx habitat that possess moderate or well-stocked coniferous understory vegetation.

(43) "Mechanized activity" means all activities associated with:

(a) chainsaw operation and timber felling;

(b) pre-commercial thinning;

(c) motorized vehicle trips associated with administrative uses;

(d) skidding and ground-based yarding operations;
(e) aerial yarding;
(f) mechanized road construction and maintenance;
(g) log loading;
(h) log processing; and
(i) log hauling.

(44) "Moderately stocked" means forest stand density described by crown closure of 40 to 69%.

(45) "Motorized trails" means a trail without restrictions on motorized use and which legally allows use by motorized vehicles. Trails used by four-wheel-drive vehicles and motorized trail bikes are examples of this type of access route.

(46) "Non-denning period" (grizzly bear) means the period April 1 through November 15.

(47) "Obligate wetland plant" means plants that possess a greater than 99% probability of occurring in wetlands under natural conditions.

(48) "Old growth" means forest stands that meet or exceed the minimum number, size, and age of those large trees as noted in "Old-Growth Forest Types of the Northern Region" by P. Green, J. Joy, D. Sirucek, W. Hann, A. Zack, and B. Naumann (1992, USFS Northern Region, internal report).

(49) "Old growth maintenance" means silviculture treatments in old growth stands designed to retain old growth attributes, including large live trees, snags and CWD, but that would remove encroaching shade-tolerant species, create small canopy gaps generally less than one acre in size, and encourage regeneration of shade-intolerant species. This type of treatment is applicable on sites that historically would be characterized by mixed severity fire regimes, either relatively frequent or infrequent.

(50) "Old growth network" means an area consisting of more than one forest stand designated or deferred by license or easement from treatment for old growth related reasons, especially for spatial considerations.

(51) "Old growth restoration" means silviculture treatments in old growth stands designed to reduce stand risk to loss by natural disturbance agents and return them to historic levels of stocking, and/or species composition. Generally, it involves removal of shade-tolerant species, reductions in stand density, and retention of most large shade-intolerant species. This type of treatment is applicable on sites that historically would be characterized by frequent non-lethal fire regimes.

(52) "Old growth set-aside" means an old growth stand(s) designated or deferred by license or easement from treatment.

(53) "Open road" means either:

(a) a road or established trail without restriction on motorized vehicle use;

(b) a road that would otherwise meet the definition of a restricted road, but that receives ongoing use of, on average, greater than six vehicle passes per week (e.g., for administrative or commercial purposes), termed low-level use; or

(c) a road that would otherwise meet the definition of a restricted road, but receives greater than low-level use for greater than 30 days duration.

(54) "Open road density" means the percentage of a defined grizzly bear analysis area that exceeds one mile of open road or motorized trail per square mile.

(55) "Other body of water" means ponds and reservoirs greater than 1/10th acre that do not support fish; and irrigation and drainage systems draining directly into a stream, lake, pond, reservoir or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(56) "Other habitat (lynx)" means forest lands in lynx habitat that do not meet the habitat definitions for denning, mature foraging, young foraging, or temporary non-lynx habitat, but serve to provide cover to facilitate movement and acquisition of alternative prey species, such as red squirrels.

(57) "Patch" means a contiguous area of vegetation similar in characteristics of interest, such as tree height, stocking, species composition, or age class. The patch can be composed of a stand, a part of a stand, or many stands.

(58) "Pileated woodpecker preferred habitat" means live, mature cottonwood stands and mature conifer forests with overstory canopies dominated by large-sized western larch or ponderosa pine, and containing Douglas-fir, large snags and CWD.

(59) "Pre-commercial thinning" means the removal of trees not for immediate financial return but to reduce stocking to concentrate growth on the more desirable trees.

(60) "Preferred fisher cover types" means cover types occurring at elevations below 6,000 feet that include:

(a) western larch/Douglas-fir;
(b) western white pine;
(c) mixed conifer;
(d) western red cedar;
(e) engelmann spruce;
(f) Douglas-fir cover types where the species of secondary abundance is:
(i) engelmann spruce;
(ii) grand fir; or
(iii) western red cedar.

(61) "Project level" means within the analysis of a proposed action under the Montana Environmental Policy Act (MEPA).

(62) "Rendezvous site" means a gathering site for members of a wolf pack used primarily for pup rearing during the summer and

occasionally for security during the fall or early winter.

(63) "Restricted road" (in areas other than grizzly security core) means a road on which motorized vehicle use shall be restricted seasonally or yearlong.

(a) Such roads require physical obstruction, generally a gate, and motorized vehicle use is legally restricted.

(b) Low-level motorized administrative use by personnel of resource management agencies, their contractors, and their permittees shall be acceptable. Low-levels are defined as:

(i) ongoing use of, on average, less than seven vehicle passes per week; or

(ii) use greater than six vehicle passes per week, but for a duration of less than 31 days.

(c) The following uses shall be allowed on restricted roads, and shall not be considered in calculation of use level:

(i) fire suppression;

(ii) unforeseen events involving human safety;

(iii) activities potentially beneficial to bears of duration less than two weeks that include monitoring, tree planting and prescribed burning.

(64) "Riparian management zone (RMZ)" means an additional area of streamside buffer established when forest management activities are proposed on sites with high erosion risk or on sites that are adjacent to fish bearing streams or lakes.

(65) "Road" means all created or evolved routes that are greater than 500 feet long, which are reasonably and prudently drivable with a conventional passenger car or pickup.

(66) "Road closure" means gates, berms, debris, or other facilities necessary to close existing roads to motorized public use.

(67) "Road construction" means cutting and filling of earthen material that results in a travel-way for wheeled vehicles.

(68) "Road in security core areas" (grizzly bear) means roads within security core areas that have permanent closure devices (unless the security core designation is removed).

(a) Examples of such closure devices shall include but are not limited to:

(i) tank traps;

(ii) large boulders; and

(iii) dense vegetation.

(69) "Road maintenance" means maintenance and repair of existing roads that are accessible to motorized use, including but not limited to:

(a) blading;

(b) reshaping; or

(c) resurfacing the road to its original condition;

(d) cleaning culverts;

(e) restoring and perpetuating road surface drainage features; and

(f) clearing the roadside of brush.

(70) "Road reconstruction" means upgrading road to accommodate proposed use.

(71) "Salvage" means the removal of dead trees or trees being damaged or killed by injurious agents other than competition, to recover value that would be otherwise lost.

(72) "Saplings" means trees with DBH from one to 4.99 inches.

(d) cleaning culverts;

(e) restoring and perpetuating road surface drainage features; and

(f) clearing the roadside of brush.

(70) "Road reconstruction" means upgrading road to accommodate proposed use.

(71) "Salvage" means the removal of dead trees or trees being damaged or killed by injurious agents other than competition, to recover value that would be otherwise lost.

(72) "Saplings" means trees with DBH from one to 4.99 inches.

(73) "Sawtimber" means size class comprised of trees greater than or equal to nine inches DBH.

(74) "Seasonally secure area" means an area of high seasonal habitat quality that is seasonally secure from:

(a) motorized access and high non-motorized use; and

(b) approximates in size that portion of a female grizzly bear's home range where a concentration of use is expected to occur.

(75) "Security core areas" means areas typically greater than 2,500 acres that during the non-denning period:

(a) are free of motorized access;

(b) consider the geographic distribution of seasonal habitats important to grizzly bears;

(c) remain in place for long periods, preferably 10 years; and

(d) are at least 0.3 mile from the nearest access route that can be used by a motorized vehicle.

(76) "Seedling" means trees with DBH less than one inch.

(77) "Silvicultural systems" means treatments applied to forest stands to accomplish specific goals.

(a) This term includes, but is not limited to:

(i) even-aged regeneration treatments;

(ii) uneven-aged treatments; and

(iii) commercial thinning.

(78) "Silviculture" means the art and science of managing trees and forests for specific objectives. Silviculture entails the manipulation of forest and woodland vegetation in stands and on landscapes to meet the diverse needs and values of landowners and society on a sustainable basis.

(79) "Simple linear calculation" means road mile distance divided by the number of 640 acre sections in a given analysis area.

(80) "Site index" means the height of free to grow trees at a specific base age of 50 years.

(81) "Site potential tree height" means the average height of the dominant or co-dominant trees of a stand for a given age based on site index.

(82) "Sites with high erosion risk" means sites located on highly erodible soils or subject to conditions that result in higher risk of erosion.

(a) Examples of highly erodible soils are non-cohesive sands such as:

(i) granitics; and

(ii) silts with low rock content.

(b) Conditions leading to high erosion risk include:

(i) those areas that are susceptible to mass wasting;

(ii) those areas already exhibiting high levels of erosion; or

(iii) severely burned areas where:

(A) bare mineral soil is exposed; or

(B) hydrophobic conditions occur.

(83) "Slash" means the woody debris that is dropped to the forest floor during forest practices and consists of:

(a) stems;

(b) branches;

(c) twigs; and

(d) leaves.

(84) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(85) "Streamside management zone or SMZ" means the stream, lake or other body of water and an adjacent area of varying width where management practices need to be modified if they might affect wildlife habitat, water quality, fish, or other aquatic resources. The SMZ encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(86) "Temporary non-lynx habitat" means:

(a) seedling stands;

(b) sapling to old age class stands with less than 40% canopy closure;

(c) non-stocked clearcuts; and

(d) stand-replacement burns which are likely to develop future habitat characteristics through forest succession that are important to lynx.

(87) "Total road density" means the percentage of a defined grizzly bear analysis area that exceeds two miles of:

(a) open roads;

(b) restricted roads; and

(c) motorized trails per square mile.

(88) "Urban/forestland interface" means lands managed by the department where proximity to human habitation warrants special consideration.

(89) "Unique and rare habitats" means a designation applied to areas of wetlands, caves, archeological sites, patches of threatened or endangered plants, or as required by state or federal law.

(90) "Visual obstruction" means that at least 90% of an adult grizzly bear is hidden from view.

(91) "Visual screening" (grizzly bear) means vegetation and/or topography providing visual obstruction that makes it difficult to see into adjacent areas from the roadbed. The distance required to provide visual screening, typically 100 feet, is dependent upon the type and density of cover available.

(92) "Water quality limited water body" means a water body considered by the Montana department of environmental quality to be impaired, and included on the most recent version of the Montana 303(d) list.

(93) "Well stocked" means stands with:

(a) seedlings up to 0.99 inch DBH occurring at densities greater than 600 trees per acre;

(b) sapling trees one to 4.99 inches DBH occurring at densities greater than 300 trees per acre;

(c) pole trees five to 8.99 inches DBH providing crown canopy densities of greater than 69%; or

(d) sawtimber trees greater than or equal to nine inches DBH providing a crown canopy density of greater than 69%.

(94) "Wetland management zone or WMZ" means a specified area adjacent to and encompassing an isolated wetland or adjacent to a wetland located next to a stream, lake, or other body of water where specific resource protection measures are implemented.

(95) "Wetlands" means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions.

(a) Wetlands include:

(i) marshes;

(ii) swamps;

(iii) bogs; and

(iv) similar areas.

(96) "Young foraging habitat" (lynx) means conifer seedling and sapling stands within lynx habitat with average height greater than or equal to six feet and density greater than or equal to 4,000 stems per acre. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW Eff. 3/14/03.)

36.11.404 BIODIVERSITY - COARSE FILTER APPROACH (1) The department shall promote biodiversity by taking a coarse filter approach thereby favoring an appropriate mix of stand structures and compositions on state lands. The department shall base appropriate stand structures and compositions on ecological characteristics such as:

(a) land type;

(b) climatic section;

(c) habitat type;

(d) disturbance regime; and

(e) unique characteristics.

(2) For coarse filter applications, the department shall describe forests and stands using these characteristics:

(a) forest composition;

(b) age class distributions;

(c) cover type; and

(d) stand structure. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW Eff. 3/14/03.)

36.11.405 BIODIVERSITY - DESIRED FUTURE CONDITIONS (1) The department shall use a site-specific model that incorporates ecological characteristics through habitat and cover types to describe cover type representation. Cover type is one characteristic that describes desired future conditions. When run at the administrative unit level, the model describes a desired future condition in terms of cover type representation. The cover types defined are white pine, ponderosa pine, Douglas-fir, western larch/Douglas-fir, lodgepole pine, mixed conifer, and subalpine types. Where data do not allow unit-level descriptions, then project-level data and descriptions will be utilized.

(a) The model indicates the approximate number of acres of each cover type that represents a desired future condition for the unit as a whole. Treatments shall be determined at the project level. The department shall use local knowledge to improve estimates as necessary, such as identification of hardwood cover types as a desired future condition.

(i) The following describes the model referred to in (1). Each stand is tested sequentially against the following criteria. Once a stand is assigned it does not go through any of the subsequent steps.

(A) If white pine makes up 10% or greater of any of the four main species, the white pine type is assigned.

(B) If ponderosa pine makes up over 20% of the cover, the ponderosa pine cover type is assigned.

(C) If western larch represents a minimum of 10% of the stand, or any stand that has at least 30% cover represented by western larch and Douglas-fir, the western larch/Douglas-fir type is assigned.

(D) If Douglas-fir represents 50% or greater, the Douglas-fir type is assigned.

(E) If lodgepole pine represents 40% or greater, the lodgepole pine type is assigned.

(F) If the stand is not yet assigned and the habitat type is greater than 630, the subalpine type is assigned.

(G) All remaining stands are assigned to the mixed conifer type.

(b) The department shall consider stands in all age classes for treatment to promote appropriate conditions. One tenet of achieving biodiversity goals at the landscape level is the presence of stands in all age classes.

(c) The department shall select desired future stand structural conditions at the project level, and shall consider disturbance regimes in terms of frequency and severity (see 36.11.408). The department shall assess stand structure at the project level and track quantities of various structures at the unit level, to the extent data are available.

(i) The department shall use the stand structure definitions as described in the department's stand level inventory. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW Eff. 3/14/03.)

36.11.406 BIODIVERSITY - FINE FILTER APPROACH (1) Because it cannot assure that the coarse filter approach will adequately address the full range of biodiversity, the department shall also employ a fine filter approach for threatened, endangered, and sensitive species (see 36.11.428 through 36.11.432), that focuses on a single species' habitat requirements to the extent consistent with the Endangered Species Act, 16 U.S.C Sections 1531 through 1544 and 77-5-116, MCA.

(a) The department shall manage for a desired future condition that promotes a diversity of habitat conditions beneficial to wildlife. The fine filter shall support habitat requirements of threatened, endangered, and sensitive wildlife and plant species. Where the coarse filter and fine filter appear to be at odds, the department shall move toward the conditions defined in 36.11.405 consistent with its fiduciary obligations owed to the trust beneficiary. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW Eff. 3/14/03.)

36.11.407 BIODIVERSITY - MANAGEMENT ON BLOCKED LANDS (1) Within areas of large, blocked ownership, the department shall manage for a desired future condition that can be characterized by the proportion and distribution of forest types and structures historically present on the landscape.

(2) A typical analysis unit shall be the administrative unit wherein the department shall focus on maintaining or restoring a range of the forest conditions that would have naturally been present given topographic, edaphic, and climatic characteristics of the area, and considering fiduciary and other obligations.

(a) Among the forest conditions the department shall typically consider are:

(i) successional stage;

(ii) species composition;

(iii) stand structure;

(iv) patch size and shape;

(v) habitat connectivity and fragmentation;

(vi) disturbance regime;

(vii) old-growth distribution and attribute levels; and

(viii) habitat type.

(3) The department shall design timber harvests to promote long-term, landscape-level diversity through an appropriate representation of forest conditions across the landscape as described in [NEW RULE IV]. Where state ownership contains forest conditions made rare on adjacent lands by the management activities of others, the department may not necessarily maintain those conditions in amounts sufficient to compensate for their loss when assessed over the broader landscape, except as it coincides with other agency objectives.

(a) However, if state ownership contains rare or unique habitat elements, as previously defined in ARM 36.11.403 occurring naturally, the department shall manage so as to retain those elements, to the extent it is consistent with fiduciary duties owed to the beneficiary. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW Eff. 3/14/03.)

36.11.408 BIODIVERSITY – SELECTION OF SILVICULTURAL SYSTEMS (1) Selection of silvicultural systems shall typically be based on natural disturbance regimes. The three predominant regimes are:

(a) stand-replacement fire;

(b) mixed severity fire; and

(c) non-lethal fire.

(2) Other disturbance mechanisms which may be predominant on a site and shall be considered when selecting treatments include, but are not limited to:

(a) insects;

(b) disease; and

(c) wind.

(3) The department shall consider the range of disturbance regimes possible for any site to avoid inflexible and inappropriate treatments.

(4) The department shall consider objectives that may suggest emulating a disturbance event that does not adhere to the predominant regime.

(5) When emulating a stand-replacement disturbance, the department shall leave some scattered or clumped standing live trees. Silvicultural systems that equate to stand-replacement are clearcut and seed tree.

(a) The department shall consider the patchy distribution of surviving trees following natural disturbance, and emulate that condition to the extent practicable.

(b) Actual numbers and distribution of live trees retained in emulations of stand replacement disturbances shall be site-specifically determined (see 36.11.411).

(c) Larger proportions of early successional stands will typically be present with these regimes than with other regimes.

(6) Silvicultural systems that emulate mixed severity regimes are modified shelterwood and group selection.

(a) Retained trees shall be from among those that would most likely have survived the disturbance, and in an arrangement typical for the disturbance, as appropriate for meeting fiduciary and project-level objectives.

(b) With most mixed severity treatments, the department shall open the stand enough for natural regeneration of shade intolerant species, or sufficiently so that inter-planted seedlings have the opportunity to survive.

(c) Clumps of small shade tolerant species may be appropriate for retention.

(d) Greater range in stand variability is typical of this regime, including clumps of similar age classes within multi-aged stands.

(7) Selection harvests shall be designed or developed to maintain uneven-aged conditions when emulating non-lethal underburns.

(a) The department shall design these treatments to ensure regeneration of shade intolerant species through natural regeneration or through planting of desired species.

(b) This regime will have higher proportions of older age classes and fewer early successional stands.

(c) The department shall generally avoid treatments that attempt to impose uneven-aged conditions on areas that traditionally existed in an even-aged condition.

(8) The department shall design selection systems or commercial thinnings when emulating single-tree or gap replacement disturbances. Such treatments do not fit within typical fire based disturbance regimes, but shall be used by the department as determined applicable at the project level. In such cases, the department does not expect regeneration of shade intolerant species and may not desire regeneration of any species. Two potential situations for this type of treatment are:

(a) commercial thinning to promote growth of residual trees; or

(b) individual tree selection in mixed stands of shade-tolerant species where, under natural conditions, individual trees died and subsequently fell, creating a gap in the canopy.

(9) Where fire is the predominant disturbance mechanism, the department shall consider:

(a) how fire may have burned in a particular location, and under site-specific conditions including:

(i) topography;

(ii) climatic zones; and

(iii) prevailing winds.

(b) using existing stand boundaries from previous fires to enhance a natural appearance, to the extent they coincide with boundaries expected from natural disturbance regimes. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.409 BIODIVERSITY - SALVAGE HARVESTING (1) Salvage of dead and dying material shall be conducted pursuant to 77-5-207, MCA. Salvage shall occur using site-specific assessment of the economic and ecological consequences, when the material left will be taken by firewood cutters, contribute to spread of insect and disease problems, or pose a human safety concern. The department shall recognize the role this material plays in maintaining biodiversity. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.410 BIODIVERSITY - NUTRIENT RETENTION (1) For nutrient retention purposes, treatments shall minimize the amount of fine branches and leafy material removed from the site.

(2) Whole tree skidding shall be discouraged, unless measures are taken to retain nutrients on site. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.411 BIODIVERSITY - SNAGS AND SNAG RECRUITS (1) The department shall retain snags and snag recruits in all harvest units involving live timber, including seed tree removals, fire, and other salvage operations as follows:

(a) On the warm and moist HTG and the wet HTG, the department shall retain an average of approximately two snags and two snag recruits over 21 inches DBH, per acre.

(b) On all other HTG, the department shall retain an average of approximately one snag and one snag recruit over 21 inches DBH, per acre.

(c) In all cases, if snags or recruits over 21 inches DBH are not present, the next largest size snag or recruit shall be retained.

(d) Retained snags and recruits may be evenly distributed or clumped.

(e) If there is an absence of sufficient snags or recruits, some substitution between the two may occur.

(f) Cull trees shall qualify as recruits provided they do not contribute to:

(i) insect and disease problems;

(ii) pose a human safety issue; or

(iii) present concerns over dysgenic practices. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.412 BIODIVERSITY - MANAGEMENT AT THE URBAN/FOREST LAND INTERFACE (1) In the urban/forest land interface, the department may diverge from other forest management rules as defined in ARM 36.11.404 through 36.11.450, if the following overriding concerns are identified at the project level:

(a) public safety, including the potential for loss or damage to critical power or communications systems;

(b) fire hazard; or

(c) adherence to the rules would yield undesirable results due to activities of others beyond the department's control, for example snags left for biodiversity reasons near open roads or housing, are likely to be harvested by firewood gatherers thus not fulfilling department objectives

(2) The department shall consider the consequences of retaining snags and snag recruits that may be readily removed by the public for firewood, or that pose a public safety hazard. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.413 BIODIVERSITY - RETENTION OF CULL MATERIAL (1) Cull live trees, and cull snags (less than 33% sound for both live trees and snags) shall be retained giving due consideration to safety issues, and stand health. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.414 BIODIVERSITY - RETENTION OF COARSE WOODY DEBRIS (1) Adequate CWD shall be left on site to facilitate nutrient conservation and cycling, maintenance of biodiversity, wildlife needs, and other considerations.

(2) CWD retention amounts shall be determined at the project level using scientifically accepted technical references as determined by the department. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.415 BIODIVERSITY - PATCH SIZE AND SHAPE (1) The department shall emulate natural spatial patterns of patch size and shape to the extent practicable. Underlying processes and their resultant pre-management patterns shall be taken into account in design of projects while recognizing that previous management activities may have altered the landscape through fragmentation or disruption of linkages. The department shall consider the effects of fragmentation and connectivity at the project level.

(2) The department shall consider other factors that influence the ability to emulate natural spatial patterns, including public sentiments, and other resources. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.416 BIODIVERSITY - MANAGEMENT ON SCATTERED LANDS (1) On areas of smaller, and/or scattered ownership, the department shall base management on restoring a semblance of historic conditions within state ownership.

(2) Where state ownership contained forest conditions made rare on adjacent lands due to the management activities of others, the department shall not necessarily maintain those conditions in amounts sufficient to compensate for their loss when assessed over the broader landscape, except as it coincides with other department objectives.

(3) However, if state trust lands contain rare or unique habitat elements occurring naturally (e.g., bog, patches of a rare plant), the department shall manage so as to retain those elements.

(4) On scattered parcels, treatments shall be determined at the project level.

(5) The department shall apply the model referred to under 36.11.404 at the administrative unit level, to the extent data are available.

(6) Silvicultural considerations listed under ARM 36.11.404 through 36.11.405, and ARM 36.11.417 and 36.11.418 shall be applicable with ARM 36.11.416. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.417 BIODIVERSITY - COOPERATIVE PLANNING (1) The department shall make reasonable efforts, in its sole discretion, to pursue cooperative planning with major adjoining landowners. The objectives of cooperative planning shall be to maintain appropriate amounts and distribution of stand structures and species mixtures to promote biodiversity at a landscape level, and to equitably maintain or promote trust revenue opportunities over the long-term.

(a) Cooperative plans shall be evaluated as needed, to monitor how successfully they are being implemented, and to determine if continued participation is warranted. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.418 BIODIVERSITY - OLD GROWTH MANAGEMENT (1) The department shall manage old growth to meet biodiversity and fiduciary objectives. The department shall consider the role of all stand age classes in the maintenance of biodiversity when designing harvests and other activities. Stand age distributions, including old growth, shall be evaluated and managed as described in ARM 36.11.407 through 36.11.416 based on the patterns historically present on the landscape as a result of natural disturbances. Amounts and distributions of all age classes will shift and change over time. No stands would be permanently deferred from management, although some stands may not be entered for relatively long time periods.

(a) The department shall identify old growth that occurs in a project area. Old growth stands shall be managed to achieve biodiversity objectives, including possible harvest. The department shall consider site-specific concerns and other legal criteria regarding the harvest of old growth. Interdisciplinary teams shall work to meet overall objectives to generate revenue for the trust, while also meeting biodiversity goals across the landscape, which shall entail project-level harvesting decisions.

(b) Designation of old growth set-asides, or networks, may be made as long as the trust secures full market value.

(c) When managing old growth the department shall apply restoration, maintenance, or removal treatments consistent with the range of natural disturbances.

(i) When utilizing old growth restoration treatments, the department shall retain sufficient large live trees to meet the old growth definition as defined in ARM 36.11.403. Such treatments shall be applicable on sites that historically had non-lethal frequent fire regimes. The department shall target shade tolerant species for removal and overall stand density shall be reduced. The department shall treat stands with periodic re-entry, and prescribed under-burning when practicable, to maintain relatively low densities, open understories and dominance by shade-intolerant species. The department shall determine specific prescriptions at the project level.

(ii) When utilizing old growth maintenance treatments, the department shall retain sufficient large live trees to meet the old growth definition as defined in ARM 36.11.403. The department shall apply such treatments on sites that historically had mixed severity fire regimes, either relatively frequent or infrequent. In some cases, the department may apply these treatments to stand replacement regimes when determined reasonable at the project level. The department shall target shade tolerant species for removal and reduce stand density. For residual stands, the department shall incorporate canopy gaps of sufficient size to encourage regeneration of shade-intolerant tree species. The department shall treat stands with periodic re-entry at less frequent intervals than for restoration. Densities and representation of shade-tolerant species will be higher than in restoration treatments. Fire shall be less frequently applied than in restoration treatments. The department shall determine specific prescriptions at the project level.

(iii) The department shall consider old growth removal treatments on sites that historically had stand replacement fire regimes. The department shall make selection of this treatment at the project level after considerations for biodiversity~~,~~ and forest health. Post treatment stands shall no longer qualify as old growth. The department shall determine specific prescriptions at the project level.

(d) The department shall maintain the option to apply or to not apply old growth removal treatments, regardless of disturbance regime, when determined reasonable at the project level. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.419 BIODIVERSITY - FIELD REVIEWS (1) The department shall field review a subset of forest management activities after project completion, or every five years for ongoing projects, to evaluate the application of biological diversity measures at a stand and landscape level.

(2) The department shall check landscape evaluations to compare actual effects of management activities and natural processes against desired or predicted effects to the extent practicable.

(3) The department shall evaluate trends in:

(a) forest cover characteristics;

(b) habitat values;

(c) insect and disease activity; and

(d) other natural disturbances.

(4) The department shall complete biodiversity field reviews. The reviews shall focus on:

(a) general landscape and stand level considerations;

(b) implementation of the coarse filter;

(c) emulations of natural processes and disturbance regimes in treatment selection;

(d) threatened and endangered species; and

(e) other such considerations.

(5) The department shall summarize biodiversity field reviews in a monitoring report to the state board of land commissioners every five years.

(6) The department shall quantify forest cover conditions, including cover types and age class distributions, annually at the unit level using data from the department's forest management bureau's stand level inventory system. Every five years the reports shall be submitted as part of the monitoring report to the state board of land commissioners.

(7) Results of monitoring shall be used to help plan follow-up and future activities in the evaluation area, and to improve the department's ability to predict the effects of activities in similar situations elsewhere. Monitoring shall be frequent enough to accomplish these purposes effectively. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.420 SILVICULTURE (1) The department shall design all prescribed silvicultural treatments to maintain the long-term productivity of the site in order to ensure the long-term capability to produce trust revenue.

(2) The department shall evaluate ecological characteristics of the site and use the characteristics to develop stand management regimes that are compatible with the site.

(3) The department shall design management regimes to address:

(a) stand structures and development;

(b) species mixtures;

(c) silvicultural systems; and

(d) time periods for reforestation.

(4) Suitable management regimes shall be those that realize the productive capability of the site for producing desired products and benefits and minimize the risk of losses to biotic or abiotic agents (e.g., wind-throw, micro-climate changes).

(5) The department shall maintain and improve the long-term quality of the genetic base in terms of growth, form, and adaptation

of tree species.

(6) The department shall maintain diversity of species, ages, and structure within or between stands, in order to maintain a complex and stable ecosystem that would be buffered against losses to:

(a) insects;

(b) disease;

(c) wildfire; and

(d) climatic elements.

(7) The department shall prepare silvicultural prescriptions for all planned treatments. These prescriptions shall be written to accomplish the following objectives in a clear and organized manner that:

(a) guides department personnel in the correct implementation of the prescribed treatments;

(b) provides a record of the objectives and details of prescribed treatments for future reference; and

(c) moves stands toward the selected desired future condition.

(i) The department will identify potential future treatments recognizing that conditions may change prior to implementation of those treatments.

(8) The department shall prescribe silvicultural treatments to meet other resource management rules and comply with all appropriate statutes and regulations. This requires coordination of treatments between stands in order to achieve parcel or landscape level goals for distribution of:

(a) stand composition;

(b) size;

(c) stocking; and

(d) structure characteristics.

(9) The department shall monitor the effectiveness of completed silvicultural treatments at meeting treatment objectives. Specific purposes of the silvicultural monitoring shall be to:

(a) identify promptly the need for follow-up treatments in order to meet treatment objectives and environmental commitments;

(b) provide information for improving the effectiveness of future silvicultural practices; and

(c) identify potential improvements to the silviculture rules.

(10) In all stands where a regeneration cut has been applied, the department shall complete a regeneration survey promptly to ensure that treatment objectives and environmental commitments are met.

(11) In planted stands, the department shall complete a survival survey the first fall after planting.

(a) When regeneration is a goal, the department shall prescribe site preparation treatments to provide for adequate vegetation control including, but not limited to, the following:

(i) herbicides;

(ii) mechanical scarification; and

(iii) broadcast burning.

(12) The department shall conduct stand evaluations prior to each scheduled entry and after each completed treatment.

(a) Evaluation methods and intensity shall be sufficient to provide information necessary for developing appropriate silvicultural prescriptions and for evaluating treatment results in terms of the prescribed objectives.

(13) The department shall maintain information on the dates and types of completed treatments and activities.

(14) The department shall maintain information on costs of intermediate silvicultural treatments including, but not limited to:

(a) planting;

(b) site preparation;

(c) slash reduction; and

(d) pre-commercial thinning. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.421 ROAD MANAGEMENT (1) The department shall plan transportation systems for the minimum number of road miles.

(a) The department shall only build roads that are necessary for current and near-term management objectives, as consistent with the other forest management rules.

(b) The department shall evaluate and use alternative yarding systems that do not require roads whenever possible.

(2) The department shall conduct transportation planning as part of landscape-level evaluations. The department shall also conduct an evaluation of existing and possible future transportation systems prior to road location and design. When planning transportation, the department shall consider:

(a) the relationship of access routes and road systems on adjacent sections, regardless of ownership. Managers shall plan systems cooperatively with adjacent landowners whenever practicable to minimize road construction.

(b) planning road systems cooperatively with adjacent landowners whenever practicable to minimize road construction.

(c) existing and probable future management needs of the tributary area, such as:

(i) coordination of department needs with adjacent ownership needs;

(ii) public access;

(iii) logging system capabilities;

(iv) forest improvement activities;

(v) fire protection; and

(vi) wildlife habitat protection.

(d) value(s) of resources being accessed for the proposed project as well as resources to be accessed from future road construction, road use or extension of transportation system.

(3) When planning the location, design, construction, and maintenance of all roads, the department shall:

(a) comply with BMP as necessary to avoid unacceptable adverse impacts or as funding is available to implement improvements to existing roads;

(b) build roads to the minimum standard necessary to best meet current and future management needs and objectives;

(c) manage roads to minimize maintenance;

(d) relocate existing roads if reconstruction, maintenance and/or use of existing roads would produce greater undesirable impacts than new construction; and

(e) use existing roads in SMZ only if potential water quality impacts can be adequately mitigated. The department shall primarily consider economic and watershed implications of relocating roads outside the SMZ.

(4) The department shall write contract specifications and administer construction projects to ensure roads are built as designed and to meet resource protection requirements.

(5) The department shall maintain roads commensurate with expected road use and appropriate resource protection.

(6) The department shall also maintain drainage structures and other resource protection measures on both restricted and open roads.

(7) The department shall include adequate maintenance requirements, proportional to road use, in all agreements for granting and acquiring rights-of-way, and the requirements shall be enforced during the administration of those agreements.

(8) The department shall plan road density to satisfy project level objectives, landscape-level plans and other forest management rules.

(9) The department shall determine which roads to close, abandon, or obliterate during project level analysis.

(10) The department shall consider closure or abandonment of roads accessible to motorized vehicles:

(a) that are non-essential to near-term future management plans; or

(b) where unrestricted access would cause excessive resource damage.

(i) In the Swan River state forest, the department shall plan road closures in accordance with the terms of the Swan Valley Grizzly Bear Conservation Agreement, dated February 23, 1995.

(11) The department shall consider for abandonment roads that are deemed non-essential. The department shall leave abandoned roads in a condition that provides adequate drainage and stabilization, while leaving intact the road prism and capital investment needed to construct that road.

(12) The department shall assess road maintenance needs by inspecting conditions on both open and closed roads every five years. The department shall then prioritize maintenance operations considering the results of the inspections.

(13) The department shall inspect existing road systems during the planning and review of proposed timber sales and other projects. The inspections are intended to provide information used for:

(a) road planning;

(b) construction and maintenance; and

(c) giving an opportunity for the correction of problem areas by incorporating corrective measures into planned projects.

(14) The department shall inspect road closure structures, such as gates and earth berms, as part of ongoing administrative duties and in response to notice of ineffective road closures received from the public. The department shall repair or modify ineffective closures or consider alternative methods of closure. Inspections would occur at least every five years. Repairs would be a high priority when allocating time and budget. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.422 WATERSHED MANAGEMENT (1) The department shall manage watersheds to maintain high quality water that meets or exceeds state water quality standards and protects designated beneficial water uses.

(2) The department shall incorporate BMP's into the project design and implementation of all forest management activities.

(a) BMP's appropriate for a given project or situation shall be determined during project development and environmental analysis. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.423 WATERSHED MANAGEMENT – CUMULATIVE EFFECTS (1) The department shall include an assessment of cumulative watershed effects on projects involving substantial vegetation removal or ground disturbance. Using the analysis, the department shall ensure that the project will not increase impacts beyond the physical limits imposed by the stream system for supporting its

most restrictive beneficial use(s), when considered with other existing and proposed state activities for which the scoping process has been initiated. The analysis shall identify opportunities, if any exist, for mitigating adverse effects on beneficial water uses.

(a) The department shall determine the necessary level of cumulative watershed effects analysis on a project level basis. The level of analysis shall depend on the:

(i) extent of the proposed activity;

(ii) level of past activities; and

(iii) beneficial uses at risk.

(b) The department shall complete a coarse filter screening on all projects involving substantial vegetation removal or ground disturbance. Except for small-scale projects with very low potential for impacts, additional analysis shall be required.

(c) The department shall complete a preliminary watershed analysis on projects when coarse filter evaluations determine there is anything other than low potential for cumulative impacts.

(d) The department shall complete a detailed watershed analysis when coarse filter screening or preliminary analysis predict or indicate the existence of unacceptable cumulative watershed effects as a result of the proposal.

(e) The department shall establish threshold values for cumulative watershed effects on a watershed level basis.

(f) The department shall determine thresholds for cumulative watershed effects by taking into account such items as:

(i) stream channel stability;

(ii) beneficial water uses; and

(iii) existing watershed conditions.

(iv) The department shall set threshold values at a level that ensures compliance with water quality standards and protection of beneficial water uses with a low to moderate degree of risk.

(g) The department shall set threshold values for cumulative effects associated with projects proposed in the watershed of a water quality limited water body at a level that provides for protection of beneficial water uses with a low degree of risk.

(2) Whenever feasible, the department shall cooperate with other landowners in watersheds with mixed ownership to minimize cumulative watershed effects within acceptable levels of risk. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.424 WATERSHED MANAGEMENT – MONITORING (1) The department shall develop and maintain a monitoring strategy to assess watershed impacts of land use activities and the effectiveness of mitigation measures. The monitoring strategy shall include:

(a) qualitative assessments, such as BMP audits, on most projects with a substantial amount of soil disturbance. For future applications, the department shall revise BMP's that fail to provide adequate protection;

(b) site-specific monitoring projects using quantitative assessment methods on selected sites to determine the effectiveness of BMP's and other commonly applied mitigation measures;

(c) assessments of habitat conditions on selected streams identified as supporting the fish species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. Sections 1531 through 1544, and sensitive fish species;

(d) evaluations of the effects of forest management activities on soils at selected sites; and

(e) an inventory and analysis of watershed impacts on state trust lands as funding allows.

(i) If conducted, the analysis shall be sufficient to identify causes of watershed degradation and set priorities for watershed restoration. The department shall emphasize mitigation of existing water quality impacts in order to provide greater opportunities to produce trust income while maintaining beneficial uses.

(2) If watershed, soil, or fisheries monitoring indicate unacceptable impacts resulting from forest management activities, the department shall attempt to verify the problem, and correct or mitigate it to an acceptable level. When necessary, the department shall use the information collected to revise mitigation measures and/or modify future activities to avoid similar problems.

(3) The department shall participate in cooperative watershed monitoring effort with other agencies, public entities and private parties, where practical, when funding is available, and when the cooperative monitoring objectives are consistent with department monitoring objectives. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.425 WATERSHED MANAGEMENT – STREAMSIDE MANAGEMENT ZONES AND RIPARIAN MANAGEMENT ZONES (1) The department shall establish a riparian management zone (RMZ) adjacent to the minimum width of the SMZ required under ARM 36.11.302 when forest management activities are proposed on sites with high erosion risk or on sites that are adjacent to fish bearing streams or lakes.

(2) The department shall determine the presence of high erosion risk from:

(a) established soil surveys;

(b) existing inventories; or

(c) site-specific field evaluations.

(3) When the department proposes forest management activities on sites determined to have high erosion risk:

(a) the department shall establish an RMZ with a minimum of 100 feet when activities are located on slopes greater than 25% but

less than 35%;

(b) the department shall establish an RMZ with a minimum of 150 feet when activities are located on slopes greater or equal to 35%, but less than 50%;

(c) the department shall establish an RMZ with a minimum of 200 feet when forest management activities are located on slopes greater or equal to 50%; and

(d) the department may modify and shorten RMZ widths established for high erosion risk when topographic breaks, existing roads or other factors are present that reduce erosion risk and provide suitable sediment delivery filtration. Modified or shortened RMZ's must still meet the minimum width of the SMZ required under ARM 36.11.302.

(4) The following restrictions apply to forest management activities conducted within an RMZ established for high erosion risk:

(a) The department shall limit new road construction within an RMZ to situations in which:

(i) a stream crossing is required;

(ii) potential impacts can be adequately mitigated; or

(iii) alternative locations pose higher risk of resource impacts.

(b) The department shall restrict ground based equipment operations within the RMZ.

(i) The department shall not allow the operation of wheeled or tracked equipment within an RMZ when it is located on slopes greater than 35%.

(ii) The department shall not allow the operation of wheeled or tracked equipment within an RMZ when it is located on slopes less than 35%, unless the operation can be conducted without causing excessive compaction, displacement or erosion of the soil.

(iii) The department may allow the use of wheeled or tracked equipment inside of that portion of an SMZ or RMZ when operated from an established road on the side of the road away from the stream pursuant to ARM 36.11.304.

(c) The department shall restrict cable yarding of logs within and across an RMZ to cable systems and operations that do not cause excessive ground disturbance within the SMZ or RMZ.

(5) The department shall design harvest prescriptions conducted in SMZ's and RMZ's located adjacent to fish bearing streams to retain adequate levels of shade and potential large woody debris recruitment to the stream channel by:

(a) establishing an RMZ that when combined with the SMZ has a minimum slope distance equal to the site potential tree height of the proposed harvest stand at age 100 years;

(b) determining site potential tree height from site index curves developed for local or regional forest types; and

(c) determining site index of a stand by measuring tree height and age directly from suitable index trees located at the approximate minimum SMZ width.

(6) The department shall determine adequate levels of shade retention on a project level basis.

(a) Adequate levels are those levels that maintain natural water temperature ranges.

(7) The department shall determine adequate levels of large woody debris retention on a project level basis.

(a) Adequate levels are those levels that maintain stream channel form and function.

(8) The department shall retain all bank edge trees on timber harvests conducted adjacent to streams.

(9) Timber harvests within the SMZ and RMZ of a stream, lake, or other body of water supporting bull trout or any other fish or aquatic species listed under the Endangered Species Act, 16 U.S.C Sections 1531 through 1544, the department shall act pursuant to ARM 36.11.427.

(10) The department shall use existing roads in the SMZ or RMZ only if potential water quality impacts are adequately mitigated and beneficial uses are fully protected. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.426 WATERSHED MANAGEMENT – WETLAND MANAGEMENT ZONES (1) The department shall establish a WMZ when forest management activities are proposed within or adjacent to an isolated wetland or adjacent to a wetland found within an SMZ.

(a) For isolated wetlands greater than 0.25 acre the WMZ boundary shall be 50 feet.

(b) For isolated wetlands smaller than 0.25 acre the WMZ boundary shall only include the wetland itself.

(c) For wetlands found within a SMZ, the WMZ boundary shall be 50 feet.

(2) The department shall meet all requirements of ARM 36.11.301 through 36.11.312 when conducting forest management activities within wetlands that are located within or intercepting an SMZ boundary.

(3) The criteria the department will use to identify wetlands are:

(a) plant species composition;

(b) soil characteristics; or

(c) depth of water table.

(4) The presence of one or more field indicators for any of the three following criteria shall be adequate for wetland designation:

(a) The department shall consider a site to meet the wetland plant species composition criteria for wetland identification if, under normal circumstances, more than 50% of the dominant plant species from all strata occupying the site are classified as:

(i) obligate wetland;

(ii) facultative wetland; or

(iii) facultative species.

(b) The department shall consider a site to meet the wetland hydrology criteria if the area is:

(i) inundated either permanently or periodically to a depth at which emergent vegetation interfaces with open water; or

(ii) the soil has a frequently occurring high water table that remains within 12 inches of the surface for more than 14 consecutive days during the growing season of the prevalent vegetation.

(c) The department shall consider a site to meet the criteria for wetland soils if the soils occupying the site are classified as hydric soils.

(5) The department shall avoid the use and construction of roads in a WMZ.

(a) The department shall use existing roads or construct roads in a WMZ only if potential water quality impacts are adequately mitigated and wetland functions are maintained.

(6) The department shall restrict harvest and equipment operations within a WMZ.

(a) The department shall limit harvest and equipment operations within a WMZ to low-impact harvest systems and operations that do not cause:

(i) excessive compaction;

(ii) displacement; or

(iii) erosion of the soil.

(b) The department shall limit operation of ground-based equipment in a WMZ to periods of:

(i) low soil moisture;

(ii) frozen soil; or

(iii) snow covered ground conditions.

(c) Where ground based skidding through an isolated wetland is necessary, the department shall minimize the number of skidding routes and the number of passes.

(d) The department shall restrict cable yarding of trees from within a WMZ to systems that fully suspend harvested logs; or partially suspend logs when conducted during periods of:

(i) low soil moisture;

(ii) frozen soil; or

(iii) snow covered ground conditions.

(7) The department shall design harvest prescriptions in a WMZ to protect and retain shrubs and sub-merchantable trees. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.427 FISHERIES (1) The department shall minimize impacts to fish populations and habitat by implementing the watershed, SMZ, and WMZ rules contained in 36.11.422 through 36.11.426.

(2) The department shall review forest management activities proposed adjacent to streams, lakes, or other bodies of water supporting bull trout or other fish and aquatic species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. Sections 1531 through 1544, pursuant to ARM 36.11.404 through 36.11.428.

(a) The department shall make reasonable efforts, in its sole discretion, to cooperate in the implementation of conservation strategies developed by the state of Montana and United States fish and wildlife service (USFWS) for the restoration and recovery of bull trout and other listed fish species.

(i) The department shall design forest management activities to protect bull trout habitat by implementing conservation strategies pursuant to The Restoration Plan for Bull Trout in the Clark Fork River Basin and Kootenai River Basin, Montana (June 2000).

(3) As designated by the department, pursuant to 36.11.436 the department shall:

(a) design forest management activities to protect and maintain:

(i) westslope cutthroat trout;

(ii) yellowstone cutthroat trout;

(iii) artic grayling; and

(iv) all other sensitive fish and aquatic species.

(b) manage habitat supporting fish and aquatic species designated by the department as sensitive in a manner that complies with other rules concerning sensitive species.

(c) make reasonable efforts to cooperate in the implementation of state conservation strategies for the protection of:

(i) westslope cutthroat trout;

(ii) yellowstone cutthroat trout;

(iii) artic grayling; and

(iv) other fish species designated as sensitive by the department, as is practicable.

(4) When installing new stream crossing structures on fish-bearing streams, the department shall provide for fish passage as specified in 83-5-501, MCA, the Stream Protection Act (124 permits). (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.428 THREATENED AND ENDANGERED SPECIES (1) The department shall participate in recovery efforts of

threatened and endangered plant and animal species. The department shall confer in its sole discretion with the United States fish and wildlife service (USFWS) to develop habitat mitigation measures.

(a) Measures may differ from federal management guidelines because the department plays a subsidiary role to federal agencies in species recovery. In all cases, measures to support recovery must be consistent with department responsibilities under the Endangered Species Act and Trust Law. The department shall work with the USFWS to amend such measures when, in the judgment of the forest management bureau chief, they are inconsistent with trust management obligations.

(b) Measures to support species recovery shall be periodically updated to implement new biological information and legal interpretations as warranted.

(2) The department shall, in its sole discretion, participate on interagency working groups established to develop guidelines and implement recovery plans for threatened and endangered species.

(a) If additional plant or animal species with habitat on state trust lands are federally listed as threatened or endangered, the department shall, in its sole discretion, participate in working groups for those species.

(b) The department shall, in its sole discretion, also participate in interagency groups formed to oversee management of recently de-listed species.

(3) The department staff shall report sightings of threatened and endangered species, except bald eagles, to respective working groups or an appropriate data repository.

(a) For bald eagles, only new nest locations shall be reported. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.429 THREATENED AND ENDANGERED SPECIES – BALD EAGLE (1) The department shall manage for bald eagles pursuant to the Montana Bald Eagle Management Plan (1994), and the Habitat Management Guide For Bald Eagles in Northwestern Montana (1991).

(a) To guide management, the department shall use site-specific plans where they have been developed previously, if they remain applicable.

(b) Maintenance of habitat for breeding bald eagles, where no site-specific management plans are in place, shall include recognition and delineation of three management zones around each active bald eagle nest, including:

(i) nest site area;

(ii) primary use area; and

(iii) home range.

(c) The department shall consider the following when conducting forest management activities within nest site areas:

(i) Mechanized activities are restricted between February 1 and August 15, unless the territory is documented as unoccupied during that breeding season, or if allowed as specified in a site-specific management plan. The department may grant exceptions for such activities as road repair, maintenance, and planting, if, following site review and documentation, activities are deemed to be:

(A) of short duration;

(B) outside of critical nesting periods; and

(C) would present minimal risk to nesting adults or offspring.

(ii) The department shall not typically target bald eagle nest site areas for timber harvesting. Timber harvesting may be acceptable to perpetuate habitat characteristics preferred by bald eagles. The department shall design timber harvests to maintain the structural and ecological characteristics of the nest site area to include:

(A) ample stocking;

(B) large emergent trees;

(C) snags;

(D) a multi-storied canopy; and

(E) vegetative screening from nearby human activity (low and high intensity).

(iii) The department shall protect such areas from firewood cutting and gathering, to the extent practicable.

(iv) Established levels of human activity (generally low intensity) may continue if the area has:

(A) a recorded nest success of greater than 60%;

(B) fledged at least three young during the previous five years; and

(C) a low potential hazard rating according to the bald eagle nest survey.

(v) The department shall limit additional human activity, both low and high intensity, over which it has control between February 1 and August 15 (see the Montana Bald Eagle Management Plan of July 1994 for exceptions).

(vi) The department shall limit permanent development associated with forest management activities.

(vii) The department shall close existing roads and trails under its control to motorized use between February 1 and August 15, if:

(A) vegetative screening from the nest is insufficient to prevent undue disturbance and human use is high; or

(B) the eagles' behavioral response suggests it is necessary.

(d) The department shall include the following considerations when conducting forest management activities within bald eagle primary use areas:

(i) Limit mechanized activities between February 1 and August 15, unless the territory is documented as unoccupied during that

breeding season, or if allowed as specified in a site-specific management plan. The department may grant exceptions for such activities as:

(A) road repair;

(B) maintenance; and

(C) planting if following site review and documentation, activities are deemed to:

(I) be of short duration;

(II) be outside of critical nesting periods; and

(III) present minimal risk to nesting adults or offspring.

(ii) Design timber harvests to maintain structural and ecological characteristics particularly:

(A) ample stocking;

(B) large emergent trees;

(C) multi-storied canopy, if present;

(D) snags;

(E) potential nest trees;

(F) perch trees;

(G) roost trees; and

(H) vegetative screening from areas of both low and high intensity human activity.

(iii) Timber harvesting shall be acceptable to perpetuate habitat characteristics preferred by bald eagles. The department may conduct salvage of wind-thrown, insect-damaged, or diseased trees as long as the general site characteristics of the area are maintained.

(iv) Low intensity human activity may occur, but high intensity human activity, over which the department has control, shall not occur between February 1 and August 15, unless otherwise allowed in a site-specific management plan.

(v) Minimize permanent development associated with forest management activities.

(vi) Minimize construction of new roads, trails, and open access routes.

(e) The department shall consider the following when conducting forest management activities within the bald eagle home range:

(i) Design timber harvests to protect, and/or enhance, key habitat components that already exist in close proximity to:

(A) lakes;

(B) rivers;

(C) wetlands;

(D) meadows; or

(E) known flight paths, such as:

(I) large snags;

(II) large perch trees;

(III) emergent trees; and

(IV) roost trees.

(ii) Design projects involving human activities, both low and high intensity, to minimize disturbance to foraging and roosting eagles, and to avoid conflict in frequently used areas during the nesting season.

(iii) Minimize construction of new roads, trails, and open access routes. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.430 THREATENED AND ENDANGERED SPECIES – GRAY WOLF (1) The department shall include the following management considerations for gray wolves:

(a) In areas with known wolf activity, evaluate the potential for active den sites prior to start up of mechanized activity of duration greater than five days.

(i) Temporarily suspend all mechanized activities and administrative uses, over which the department has control, in areas that are within a one-mile radius of any known, active wolf den until such time as wolves are known to have vacated the site or it has been determined that resumption of activities will not present conflicts with wolf use.

(b) Temporarily suspend operations if a suspected rendezvous site is observed within 0.5 mile of ongoing mechanized activities. Activities may resume if the department determines that resumption of activities will not present conflicts with wolf use.

(c) Design projects using the coarse filter approach pursuant to [NEW RULE IV] to promote maintenance and development of ecological features occurring naturally and historically that are important elements of the life-history requirements of:

(i) white-tailed deer;

(ii) mule deer; and/or

(iii) elk. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.431 THREATENED AND ENDANGERED SPECIES – GRIZZLY BEAR (1) The department shall include the following management considerations for grizzly bears:

(a) Refer to the Swan Valley Grizzly Bear Conservation Agreement (February 23, 1995) for lands administered by the swan unit field office. Specific definitions that pertain to management within the Swan River state forest are contained in the agreement. In the event

that cooperative implementation of the agreement ceases, the department shall proceed to the extent practicable under the terms of the agreement in the Swan River state forest.

(i) Participate in annual monitoring and reporting of implementation of the Swan Valley Grizzly Bear Conservation Agreement (February 23, 1995) for the duration the agreement is in effect, or until the department otherwise terminates the agreement pursuant to applicable terms. ((History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.432 GRIZZLY BEAR MANAGEMENT ON BLOCKED LANDS (1) The department shall adhere to the following when conducting forest management activities on blocked Stillwater unit lands (Stillwater and Coal Creek state forests) within the Northern Continental Divide ecosystem (NCDE):

(a) Use BMU and BMU sub-units for analysis purposes where applicable.

(b) Conduct road density estimates using standardized techniques accepted by the interagency grizzly bear committee, NCDE subcommittee, or other techniques approved by the forest management bureau chief.

(c) Design projects to result in no net increase in the proportion of each BMU sub-unit (trust lands only) that exceeds an open road density of one mile per square mile from baseline levels calculated in 1996.

(i) In the event a road is encountered that is not in the existing baseline, and evidence suggests the road existed prior to 1996, the road would be added to the 1996 baseline data and revised baseline levels would be calculated. This shall apply only during the non-denning period.

(ii) The department may allow temporary increases in road density above 1996 baseline levels for each BMU sub-unit upon approval by the forest management bureau chief. In such situations, the department shall apply alternative methods ~~of~~ to minimize ~~of~~ impacts on grizzly bears to the maximum extent practicable.

(d) Design projects to result in no net decrease from baseline levels calculated in 1996 in the proportion of each BMU sub-unit (trust lands only) designated as security core. The department shall map security core areas. Security core areas shall remain intact for periods approximating 10 years, to the extent practicable.

(i) The department may allow temporary decreases in security core below 1996 baseline levels for each BMU sub-unit upon approval by the forest management bureau chief. In such situations, the department shall apply alternative methods to minimize the impacts on grizzly bears to the maximum extent practicable.

(e) For project-related activities that would occur within or immediately adjacent to security core areas, make efforts to conduct human activities during the denning period (November 16 to March 31). The department shall construct temporary roads and skid trails to prevent future use by motorized vehicles during the non-denning period after completion of project-related activities.

(f) When conducting project activities in or near identified security core areas during the non-denning period, minimize the duration of air and ground-based harvest activities to the extent practicable, particularly in known areas of seasonal importance for bears.

(i) The department shall make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security core areas and/or known seasonally secure areas.

(ii) Where practicable, the department shall design flight paths to occur greater than one mile from potentially affected core areas or areas of known seasonal importance.

(g) Where procedures are lacking and to the extent practicable, use published information, professional judgment, and available technology to locate and provide for secure areas of known seasonal importance for displaced bears where displacement risk is deemed high. Where feasible, the department may expand security core areas with additional buffers and/or temporary road restrictions to reduce temporary losses of effective security core area.

(h) Calculate total road density for analysis purposes and make efforts to reduce total road density to the extent practicable.

(i) Consider seasonal closures and activity restrictions for mitigating proposed actions.

(j) Monitor road closures annually for effectiveness and make necessary repairs within one operating season.

(k) Retain no less than 40% of any BMU sub-unit (trust lands only) in hiding cover. In situations beyond department control where disturbances may temporarily reduce hiding cover within a BMU sub-unit, the department shall make efforts to minimize further reductions of hiding cover.

(l) To provide additional security for grizzly bears, retain cover that provides visual screening adjacent to open roads, where practicable.

(m) Prohibit contractors and purchasers conducting contract operations from carrying firearms while operating. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.433 GRIZZLY BEAR MANAGEMENT ON OTHER WESTERN MONTANA LANDS (1) When conducting forest management activities on scattered lands administered by the Stillwater unit, Kalispell unit, Missoula unit and Clearwater unit, within the (NCDE), and in Plains and Libby unit lands within the Cabinet-Yaak ecosystem, the department shall adhere to the following:

(a) Design projects to result in no permanent net increase of open road density on parcels that exceed an open road density of one mile per square mile using simple linear calculations. This shall apply only during the non-denning period. Temporary increases are permissible for up to two consecutive operating seasons. The department shall make efforts to reduce total road density when compatible with other agency goals and objectives.

(b) Retain cover that provides visual screening adjacent to open roads to the extent practicable.

(c) Maintain hiding cover where available along all riparian zones.

(d) Prohibit contractors and purchasers conducting contract operations from carrying firearms while operating. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.434 GRIZZLY BEAR MANAGEMENT ON EASTERN MONTANA LANDS (1) On Bozeman unit lands within the greater Yellowstone ecosystem, and Helena unit and Conrad unit lands within the NCDE, the department shall determine appropriate methods to comply with the Endangered Species Act, 16 U.S.C. Sections 1531 through 1544 and 77-5-116, MCA, on a project level basis. Factors to consider shall include, but not be limited to:

(a) cover retention;

(b) duration of activity;

(c) seasonal restrictions;

(d) hiding cover near riparian zones;

(e) food storage (where applicable); and

(f) road density. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.435 THREATENED AND ENDANGERED SPECIES – CANADA LYNX (1) The department administrative area offices where lynx rules apply to management activities include the department's northwest land office, southwest land office, central land office and northeast land office.

(2) Specific habitat elements recognized as important for lynx that occur within preferred lynx habitat types include:

(a) denning;

(b) mature foraging;

(c) young foraging; and

(d) temporary non-lynx habitat.

(3) The department shall generally manage for lynx habitat through the coarse filter approach, consistent with the emulation of natural processes, as described in [NEW RULE IV].

(a) When specifically assessing lynx habitat for stand identification, management, and retention the department may consider:

(i) CWD abundance;

(ii) proximity to foraging habitat;

(iii) proximity to denning habitat;

(iv) proximity to class one streams;

(v) habitat connectivity; and

(vi) firewood cutting risk.

(4) The department shall not salvage within stands identified as necessary to meet denning habitat requirements.

(5) In areas considered for pre-commercial thinning in lynx habitat, the department shall delay thinning in young foraging habitat stands with stem density greater than or equal to 4,000 per acre until the average crop tree height is greater than or equal to 15 feet or until lower limbs have evanesced up to approximately six feet high. Post-thinning, the department shall consider these stands other habitat for a minimum of 10 years post-treatment.

(6) The department shall:

(a) minimize construction of new roads;

(b) incorporate use of temporary roads; and

(c) obstruct or obliterate unnecessary existing roads in lynx habitat.

(7) When conducting forest management activities on blocked portions of the Stillwater, Swan River or Coal Creek state forests the department shall adhere to the following:

(a) The department shall identify and retain denning habitat on approximately 5% of the total lynx habitat acreage (sum of denning, mature foraging, young foraging, and temporary non-lynx habitat) within each applicable grizzly bear BMU sub-unit in patches greater than or equal to five acres (larger preferable).

(b) The department shall, on a BMU sub-unit basis, manage for 10% of the total lynx habitat acreage to be in a mixture of mature foraging and young foraging habitat.

(i) The department may salvage in mature foraging stands, provided that understory sapling densities are not reduced below the moderately-stocked condition, and CWD abundance is enhanced or not appreciably altered.

(8) When conducting forest management activities on all other department lands administered by the department's northwest land office, southwest land office, central land office and northeast land office, the department shall adhere to the following:

(a) The department shall maintain a minimum of five acres of denning habitat, where present, on parcels containing appreciable amounts of lynx habitat as determined at the project level.

(b) The department shall evaluate habitat suitability and retention of mature foraging habitat on parcels containing lynx habitat at the project level.

(i) On parcels containing appreciable amounts of lynx habitat in areas where broader landscape habitat conditions allow, the department shall retain approximately 10% of the lynx habitat acreage in mature or young foraging habitat. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.436 SENSITIVE SPECIES (1) The department recognizes that certain plant and animal species, both terrestrial and aquatic, are particularly sensitive to human activities in managed forests. Populations of such species are usually small and/or declining. Continued adverse impacts from land management activities may lead to their being federally listed as threatened or endangered. Because sensitive species usually have specific habitat requirements, consideration of their needs is recognized as a useful and prudent fine filter for ensuring the department meets the primary goal of maintaining diverse and healthy forests. Considering sensitive species in management actions helps ensure that decisions will be made appropriate to the fundamental philosophy and that additional federal listings will not be necessary.

(a) However, if objective analyses suggest that the underlying ecological forces would produce a distribution of cover types different than those existing, it is appropriate to move toward the historic pattern. Sensitive species considerations for habitat management are not intended to preclude a general move toward historic representation of cover types.

(2) The department shall manage to generally support populations of sensitive species on state trust lands. The department shall accomplish this by managing for site characteristics generally recognized as important for ensuring their long-term persistence. The department may accept localized adverse impacts, but only within the context of an overall strategy that supports habitat capability for these species.

(a) Department staff shall report notable observations of sensitive plant and animal species to the Montana natural heritage program (MNHP) or other appropriate data repository.

(b) Sites identified as important on projects with identified sensitive plant species shall be monitored to assess implementation of mitigation measures. On selected department projects with listed sensitive animal species, periodic follow-up surveys would be conducted to assess how well management actions have provided for site conditions needed to support those populations. Deficiencies would be documented and used to guide future management actions and mitigations.

(3) For sensitive plant species, the department shall protect important sites and/or site characteristics with mitigation measures applied to management activities likely to have substantial long-term impacts. Prior to conducting planned land management activities, the department, at its sole discretion, shall refer to databases maintained by the MNHP, the United States forest service (USFS) and/or other appropriate sources for information on occurrence of plant species of special concern. Where information indicates potential for sensitive plant species and their habitat to occur within project areas, field surveys and/or consultation with other qualified professionals may be required to determine the presence, location, and mitigation measures for sensitive plant species.

(4) For sensitive animal species, the department shall provide habitat characteristics recognized as suitable for individuals to survive and reproduce in situations where land ownership patterns, underlying biological conditions, and geographical conditions allow for them. The department's contribution toward conservation of wide-ranging animal species that occur in low densities and require large areas to support self-sustaining populations would be supportive of, albeit subsidiary to, the principal role played by federal agencies with larger land holdings.

(5) For proposed projects, the department shall look for opportunities to provide for habitat needs of sensitive animal species, primarily through managing for the range of historically occurring conditions appropriate to the sites. In blocked ownerships this shall include consideration of such issues as connectivity and corridors. In scattered ownerships, the department shall not necessarily commit to providing all the life-requisites of individual members of sensitive species, particularly if adjacent landowners managed in ways to limit the potential for individuals on state trust lands to be part of functional populations.

(6) The forest management bureau chief shall maintain a list of sensitive animal and fish species specific to each administrative land office. The department shall develop and modify this list using information and classification systems developed by the USFS, USFWS, MNHP and, for fish species only, the FWP. The department shall use this list at the project level for identifying species appropriate to consider in project analyses at each administrative area office. The department shall base listing by land office on general geographic distribution and habitat affinities of animal species, and would not require site-specific evidence of presence on state trust lands. Additions to, or deletions from this list, of any animal not already categorized as sensitive by USFS region one, or as "fish species of special concern" by FWP, would require written justification. The department would not routinely conduct site-specific surveys for the presence of sensitive animal species. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.437 SENSITIVE SPECIES – FLAMMULATED OWL (1) The department shall consider the following factors when harvesting timber where greater than 50 contiguous acres of flammulated owl preferred habitat types exist:

(a) Favor seral ponderosa pine on sites where historical fire regimes favor it.

(b) Favor older-aged ponderosa pine or, secondarily, Douglas-fir for retention or recruitment on warm, dry slopes.

(c) Retain and recruit large-sized snags pursuant to [NEW RULE IV].

(d) Open up dense stands on warm, dry slopes towards a basal area of 35 to 80 square feet.

(e) Promote non-uniform stands and retain occasional dense patches of conifer regeneration and shrubs. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.438 SENSITIVE SPECIES – BLACK-BACKED WOODPECKER (1) The department shall consider the following when developing prescriptions for harvest in areas of recently burned (less than five years) forest patches greater than 40 acres in size:

(a) The department shall minimize mechanized activity within 0.25 mile of black-backed woodpecker habitat during the period April 15 through July 1.

(b) The department shall manage approximately 10% of the burned acreage in an unharvested condition that is broadly representative of the entire burn (i.e., similar habitat types, fire intensity, elevations, stand density, and stand age class prior to burn) to be determined using site-specific information at the project level. The department shall manage such areas in relatively contiguous blocks favoring close proximity to unharvested fire-killed deferred stands on neighboring ownerships considering the habitat needs of black-backed woodpeckers.

(c) The department shall leave standing sub-merchantable burned trees where soil, slope stabilization, and human safety concerns allow. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.439 SENSITIVE SPECIES – PILEATED WOODPECKER (1) The department shall manage stands containing pileated woodpecker preferred habitat in larger, rather than smaller blocks, whenever practicable. Where large contiguous tracts of such stands are unavailable, the department shall consider management of smaller stands in close proximity to one another, or close to similar stands on adjacent ownerships.

(a) The department shall consider unsuitable areas of pileated woodpecker preferred habitat of less than 40 acres, unless they are close to other appropriate stands.

(b) Within pileated woodpecker preferred habitat, the department shall manage for snags, snag recruits, and CWD according to [NEW RULES XI, XIII, and XIV] particularly favoring retention of western larch, ponderosa pine and black cottonwood, considering amounts that would historically occur on similar sites. The department shall consider broken-top snags greater than 20 feet tall priority candidates for retention.

(c) Where appropriate, the department shall manage to encourage retention of black cottonwood, particularly where it can attain large size. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.440 SENSITIVE SPECIES – FISHER (1) The department shall assess fisher habitat on projects that contain preferred fisher cover types for lands administered by the department's northwest land office and southwest land office. When conducting forest management activities, the department shall consider the following as consistent with 77-5-301 and 77-5-302, MCA:

(a) In blocked areas within the Stillwater, Swan River, and Coal Creek state forests, the department shall use the grizzly bear BMU sub-unit as the unit of analysis. In all other areas, the department shall determine the unit of analysis at the project level.

(b) When managing within preferred fisher cover types that are within 100 feet of class 1 streams or within 50 feet of class 2 streams:

(i) The department shall manage 75% of the acreage (trust lands only) to be in the sawtimber size class in moderate to well-stocked density. The department shall postpone treatments where this cannot be accomplished.

(A) Where treatments reduce stand density below moderately stocked levels, the department shall make efforts to provide forest connectivity along the opposite stream bank.

(ii) The department shall define a minimum of one buffered management zone connecting to other fisher habitat through sites where individual perennial and intermittent stream courses are difficult to define (e.g., braided with many channels).

(iii) The department shall retain large snags, snag recruits and CWD pursuant to [NEW RULES IX through XIV]. The department shall promote recruitment if existing abundances are below expected levels. Following large-scale stand replacement disturbance events in preferred fisher cover types, the department shall give consideration to maintaining an abundance of large snags and CWD within 100 feet of class 1 streams and 50 feet of class 2 streams.

(iv) When practicable, the department shall avoid constructing new roads in preferred fisher cover types within 100 feet of class 1 streams or 50 feet of class 2 streams. Where feasible, the department shall incorporate use of temporary roads, and obstruct or obliterate unnecessary existing roads.

(c) The department shall manage for at least one forested patch providing connectivity between adjacent third order drainages, preferably in saddles, where landscape conditions allow.

(d) The department shall consider importance of late-successional riparian and upland forest in meeting the life requisites of fishers. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.441 SENSITIVE SPECIES – COMMON LOON (1) The department shall manage for common loons in the following manner:

(a) For all lakes where common loon nesting pairs exist:

(i) limit construction of new permanent roads, structures, or permanent developments within a 500-foot radius of the nest site; and

(ii) limit mechanized activity within a 500-foot radius of the nest site between April 15 and July 15.

(b) For lakes which have been recently occupied but for which no currently nesting pair resides:

(i) survey lakeshores for nesting loons prior to developing plans for lakeshore development, road construction, or timber harvest that will occur within 500 feet of the lakeshore;

(ii) Prior to finalizing plans for any new roads, developments, timber sales, or intensive motorized activity that will occur on or near any lake potentially suitable for use by loons, design appropriate mitigation measures specific to the situation; and

(iii) If nesting is not documented, identify sites for proposed projects that would least likely be occupied by nesting loons in the future. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.442 SENSITIVE SPECIES – PEREGRINE FALCON (1) The department shall manage for peregrine falcons within a 0.25 mile radius of a known nest site, and develop appropriate silvicultural mitigation measures for the particular situation.

(a) The department shall limit human activity, both low and high intensity, and mechanized activity typically within a 0.5 mile radius from known nest sites between March 1 and August 1.

(i) The department shall determine distances for activity restrictions on a site-specific basis for aerial operations. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.443 BIG GAME (1) The department shall promote a diversity of stand structures and landscape patterns, and rely on them to provide good habitat for native wildlife populations.

(a) To the extent possible, the department shall manage to provide for big game habitat. Measures to mitigate potential impacts shall be implemented if they are consistent with overall management objectives, and with ARM 36.11.404 through 36.11.418.

(b) The department shall consult with the FWP to determine which big game habitat values are most likely to be affected by proposed management actions, and would cooperate with FWP to limit detrimental impacts to big game.

(2) The department shall prohibit contractors and purchasers conducting contract operations from carrying firearms while operating.

(3) Biodiversity monitoring procedures described in ARM 36.11.419 shall be used to track health of forest ecosystems. This process shall be used as the primary indicator of the health of wildlife populations using these ecosystems. When necessary, corrective actions would be taken as described in ARM 36.11.419. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.444 GRAZING ON CLASSIFIED FOREST LANDS (1) The department shall inspect grazing licenses issued on classified forest trust lands before the renewal date to determine:

(a) range condition;

(b) plant species composition;

(c) riparian forage and browse utilization;

(d) streambank disturbance;

(e) presence of noxious weeds;

(f) erosion; and

(g) condition of improvements.

(2) The department shall inspect grazing licenses mid-term between renewals to determine:

(a) range condition;

(b) riparian forage and browse utilization;

(c) streambank disturbance; and

(d) overall tract conditions with an emphasis on potential concerns or problems noted during the previous renewal inspection.

(3) The department may specify grazing license stipulations any time during the term of the license.

(4) The department shall specify the number of animal unit months, type of livestock, and grazing period of use on grazing licenses for classified forest trust lands.

(5) The department shall determine stocking rates for grazing licenses using visual assessment of existing vegetative plant species composition. The department shall compare estimated species composition by weight per range site to potential (climax range condition) for specific range sites.

(6) The department shall require grazing management practices that are designed to minimize loss of riparian and streambank vegetation, and structural damage to stream banks that results in non-point source pollution for grazing licenses issued or renewed on forest classified lands.

(7) The department shall manage each grazing license to:

(a) maintain or restore both herbaceous and woody riparian species in a healthy and vigorous condition;

(b) facilitate the ability of vegetation to reproduce and maintain different age classes in the desired riparian-wetland plant communities;

(c) leave sufficient vegetation biomass and plant residue, including woody debris, to provide for adequate sediment filtering and dissipation of stream energy for bank protection; and

(d) minimize the physical damage to stream banks to a level that maintains channel stability and morphological characteristics.

(8) The department shall authorize continuous or season-long grazing only when healthy riparian conditions are maintained.

(9) The department shall direct the grazing licensees to place mineral, protein, and other supplements in areas that minimize animal concentration near riparian areas.

(10) The department shall direct grazing licensees to locate holding facilities outside of riparian areas.

(11) The department shall evaluate existing riparian use for each license during renewal and midterm inspections and may specify acceptable riparian use and streambank impact levels through stipulations in the grazing license, if necessary to meet conditions described in (6).

(12) The licensee, with technical assistance from the department, shall mitigate or rehabilitate riparian and stream channel damage greater than the specified riparian use levels as determined pursuant to (11). If improved management does not resolve the damage, the department may make adjustments to the license to facilitate rehabilitation efforts.

(13) Licensees shall have primary responsibility for developing and maintaining rangeland improvements. The licensee shall also be responsible for maintaining or improving range sites by managing livestock grazing and utilization in a manner that would produce a stable or upward trend in range condition. The department may support rangeland improvements through technical and financial assistance, as workload and budget allow. Rangeland improvements include, but are not limited to, riparian management, weed control, water developments, grazing management systems, and fencing. The department and the licensee may cost-share improvements through an addendum to the license. The addendum stipulates terms and conditions by which the licensee may be required to reimburse the state for improvement expenses incurred. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.445 WEED MANAGEMENT (1) On classified forest lands the department shall use an integrated pest management approach for noxious weed management that includes prevention, education, cultural, biological, and chemical methods as appropriate.

(a) The department shall limit herbicide applications to areas where herbicides provide a cost-effective means of control.

(b) The department shall consider new outbreaks of noxious weeds and locations where native plant communities are threatened by noxious weed encroachment the first priority for control.

(c) The department shall submit general re-vegetation plans for land-disturbing projects to county weed boards as part of biennial agreements.

(d) The department shall promptly re-vegetate road rights-of-way and other disturbed areas with site-adapted species including native species, as available.

(2) The department shall manage forested state trust lands with the intent of controlling the spread of weeds.

(a) Practices to be utilized include, but are not limited to:

(i) the use of weed-free equipment;

(ii) prompt re-vegetation of roads;

(iii) minimizing ground disturbance; and

(iv) stipulations and control measures that limit the spread of weeds in timber sale contracts.

(3) A licensee of classified forest trust land shall be responsible for weed control at their expense pursuant to ARM 36.25.132.

(4) On sites where weeds were introduced by recreation use, the department shall make available a portion of recreational access fees for weed control pursuant to ARM 36.25.159.

(5) All right-of-way agreements shall require the permittee to control weeds commensurate with the permitted use.

(a) This may include fees charged for weed control by the department or the weed district.

(6) In areas where weeds are widespread across state and adjacent ownerships, the department shall cooperate with weed districts on control projects.

(7) The department shall review implementation of noxious weed control and mitigation measures on cooperative projects and shall establish reasonable goals to address deficiencies as determined by the department at its sole discretion. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.446 FINANCES AND ECONOMICS (1) The department shall manage forested state trust lands at different levels of intensity depending on biological productivity and economic potential. The department shall make investments according to trust law to maximize revenue over the long-term for the beneficiary, and to accomplish forest management objectives.

(a) The department shall retain flexibility in order to produce long-term stable income and pursue other income opportunities as guided by changing markets for new and traditional uses. Other site-specific income opportunities may occur on a minor amount of forest acreage. These uses may diverge from elements of [NEW RULE I through NEW RULE XLV], but would not compromise the overall fundamental premise of managing for biodiversity and forest health.

(2) The department shall review on an annual basis its financial and economic assumptions used in management decisions.

(3) The department shall prepare an annual revenue/cost summary for the forest management programs. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.447 CATEGORICAL EXCLUSIONS (1) Forest management activities that are classified as categorical exclusion shall not require an environmental assessment or environmental impact statement.

(a) Categorical exclusions include activities on state trust lands conducted by others under the authority of the department as well as activities conducted by the department itself.

(2) Categorical exclusions shall not apply where extraordinary circumstances may occur. This includes, but is not limited to, activities affecting one or more of the following:

(a) sites with high erosion risk;

(b) federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the USFWS;

(c) within municipal watersheds;

(d) the SMZ of fish bearing streams or lakes, except for modification or replacement of bridges, culverts and other crossing structures;

(e) state natural area;

(f) Native American religious and cultural sites;

(g) archaeological sites;

(h) historic properties and areas;

(i) several related projects that individually may be subject to categorical exclusion but that may occur at the same time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or

(j) violations of any applicable state or federal laws or regulations.

(3) Pursuant to ARM 36.2.523, the department adopts the following additional categorical exclusions for forest management activities conducted on state trust lands:

(a) Minor temporary uses of land involving negligible or no disturbance of soil or vegetation and having no long-term effect on the environment.

(b) Plans or modifications of plans adopted or approved by the department that would not essentially pre-determine future individual department actions affecting the physical or biological environment.

(c) The issuance, renewal, or assignment of a lease or license on land when the uses of the land authorized under the lease or license will remain essentially the same.

(d) Acquisition of fee title, easements, rights-of-way, or other interests in land that do not tend to commit the department to other actions.

(e) Maintenance and repair of existing roads.

(f) Reconstruction or modification of an existing bridge on essentially the same alignment, or replacement of a culvert, including temporary diversion or channelization of the stream, if done in accordance with all applicable state and federal laws and regulations and with BMP's to minimize sedimentation.

(g) Crossings of class 3 stream segments by means of culvert, bridge, ford, or other means, in accordance with BMP's and pursuant to ARM 36.11.304.

(h) Issuing permits for temporary use of existing roads.

(i) The closure of existing roads including installation of gates, berms, debris, or other facilities necessary to close existing roads to motorized public use.

(j) Removal of materials that have been stockpiled from previous excavation.

(k) Back filling of earth into previously excavated land with material compatible with the natural features of the site.

(l) Gathering small quantities of forest products for personal use, such as:

(i) firewood;

(ii) Christmas trees; or

(iii) posts.

(m) Regeneration of an area to native tree species, through planting or other means, including site preparation that does not involve the use of herbicides or result in conversion of the vegetation type.

(n) Seed procurement, growing, lifting, and distributing nursery stock, and associated non-chemical disease and pest control.

(o) Drilling of water wells for domestic use and for irrigation of lawns and gardens for existing cabin sites or home sites.

(p) Herbicide or pesticide treatments, done in accordance with registered label instructions and uses, for control of pests or nuisance vegetation, using spot applications on less than 160 acres within a 640 acre section, during a calendar year.

(q) The handling of hazardous materials for fire suppression or other purposes (e.g., fuel for a helicopter seeding project) when done according to specifications of the United States department of transportation, state and federal regulations, and label specifications.

(r) Fence construction, which may include cutting minor amounts of live timber not in excess of 5,000 board feet, if the fence is no more than 42 inches high and the bottom wire is at least 16 inches from the ground.

(s) Installation of water pipelines to improve livestock distribution or otherwise benefit grazing allotments.

(t) Mechanical removal of trees less than two feet tall that are encroaching on range or non-commercial forest lands, on up to 60 contiguous acres, not to exceed a total of 160 acres within a 640 acre section, during a calendar year.

(u) Removal of hazardous trees from around structures, recreation areas, and roads, not to exceed 5,000 board feet.

(v) Activities associated with cone collection to provide seed for reforestation.

(w) Individual timber sales of up to 100,000 board feet, or salvage harvests of up to 500,000 board feet. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.448 MANAGEMENT OF THE STATE FOREST LAND MANAGEMENT PLAN (1) Beginning in the year 2005 and every five years thereafter, the forest management bureau chief shall make a written report to the director of the department and the trust land management division administrator on the current status of state forest land management plan implementation and effectiveness, including a recommendation on the need for significant changes to the plan.

(2) Upon review, the department shall consider changing the plan for one or more of the following reasons:

(a) new legislation is adopted that is not compatible with the selected alternative;

(b) the state board of land commissioners provides new direction; or

(c) the forest management bureau chief judges that the original assumptions supporting the plan no longer apply.

(3) The department may make minor changes or additions to the plan without a programmatic review of the entire plan as long as those changes are compatible with the overall plan, as determined at the sole discretion of the department.

(a) Cumulative minor changes could result in a programmatic review of the SFLMP.

(5) The department shall monitor individual resources pursuant to ARM 36.11.404 through 36.11.445.

(a) The department shall compile the results of monitoring into a report for the state board of land commissioners by October 2005 and every five years thereafter.

(b) The department shall include monitoring mechanisms for applicable elements of ARM 36.11.404 through 36.11.445 and project environmental analyses in forest management activity contracts.

(c) Contract administrators shall monitor compliance with all requirements specified in contracts for forest management activities. If contract requirements are not being met, the contractor shall correct them, under department supervision. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.449 SITE-SPECIFIC ALTERNATIVE PRACTICES (1) The department shall comply with ARM 36.11.401 through 36.11.445 when conducting forest management activities, unless approval has been obtained from the forest management bureau chief for alternative forest management practices. Alternative practices may be designed in response to site-specific conditions encountered while planning forest management activities.

(2) The forest management bureau chief may approve proposed alternative practices only if such practices would be otherwise lawful, and it is determined with reasonable certainty that the proposed alternative practices would provide adequate levels of resource protection. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, Eff. 3/14/03.)

36.11.450 TIMBER PERMITS (1) Under the authority of 77-5-212, MCA, the department may issue commercial timber permits at commercial rates and without advertising that do not exceed 100,000 board feet of timber, or, in cases of emergency salvage, do not exceed 200,000 board feet of timber. The department shall not be required to obtain approval from the board of land commissioners to issue specific timber permits. The board shall retain administrative oversight of the timber permit program. Permits will not be subject to categorical exclusions except as stated in ARM 36.11.447. (History: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA; IMP, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA; NEW, 2003 MAR p. 397, Eff. 3/14/03.)

36.11.451 DEFINITIONS As used in conjunction with these rules, the following terms shall have the meanings indicated, except where the context clearly indicates otherwise:

(1) "Applicant" means the individual or organization who submits the original request and associated documentation for a timber conservation license in lieu of a sale.

(2) "Bidder" means any qualified individual or organization who submits a monetary offer to purchase a timber conservation license in lieu of a sale.

(3) "Biological infestation" means any situation where animals, insects, or diseases are present in sufficient amounts to threaten mortality to 25% or more of the standing live trees.

(4) "Deferred stumpage value" means the value of the stumpage that will be foregone as a result of not selling timber for harvest.

(5) "Department" means the department of natural resources and conservation.

(6) "Fire or other damage" means damage to the trees by fire or other natural agents that cause the tree to die.

(7) "Forest improvement fees" means fees collected for the forest improvement program.

(8) "Minimum asking price" means the lowest purchase price per volume of wood the department will accept on a timber sale.

(9) "Sale-scoping announcement" means the initial public notification of the department’s intent to develop a timber sale.

(10) "Timber conservation license" means a temporary agreement restricting the harvest of timber on a state timber sale but not prohibiting other forms of use and management of the land and timber by the state.

(11) "Trust beneficiaries" means those institutions that receive revenue from the management of lands and resources granted to the state under the enabling and subsequent acts.

(12) "Wind throw" means trees blown to the ground by high winds. (History: 77-5-201, MCA; IMP, 77-5-208, MCA, NEW, 2003 MAR p. 2874, Eff. 12/25/03.)

36.11.452 TIMBER CONSERVATION LICENSE APPLICATION CONDITIONS AND FORMS (1) The department may offer a timber conservation license as an alternative to the sale and harvesting of timber upon the submittal to the department of a written request to defer the sale of timber.

(2) The department may offer a timber conservation license for all or part of a timber sale.

(3) A notice of intent to request a timber conservation license must occur within 60 days of the sale-scoping announcement. The notice must include a fee from the applicant.

(a) If the conservation license is to include only a portion of the total sale area, the fee will be $100.

(b) If the timber conservation license encompasses the entire sale area, a fee of $200 must be included.

(4) In order for the department to comply with its responsibilities pursuant to the Montana Environmental Policy Act and to obtain approval for offering the timber conservation licenses from the Montana board of land commissioners, an interested party shall, when it seeks the deferral of only a portion of a timber sale, submit to the department within 90 days of the sale-scoping announcement:

(a) a map;

(b) a legal description identifying the sale area to which the timber conservation license would apply; and

(c) all application fees.

(d) The map and legal description shall be submitted on a form prescribed by the department.

(5) An application to the department for a conservation license in lieu of a timber sale shall be on a form prescribed by the department.

(a) The application fee for a conservation license in lieu of a timber sale for a portion of a timber sale is $500.

(b) The application fee for a conservation license in lieu of a timber sale for the entire timber sale is $200.

(6) The fee identified in (3) submitted with the notice of intent to request a conservation license in lieu of a timber sale shall apply towards the application fee identified in (5)(a) and (b) for a conservation license in lieu of a timber sale.

(7) If the high bidder for the timber conservation license in lieu of a timber sale has a winning bid and is someone other than the applicant, then the successful bidder will be assessed the application fee and the original applicant's fee will be refunded.

(8) The applicant for a timber conservation license shall be notified by the department in writing of any deficiencies in the application that make the license unacceptable. The applicant has 15 days from the date of notice to correct the deficiencies and resubmit the application for consideration. An application may be resubmitted only twice. The department maintains the right to reject any resubmitted application if, in the opinion of the department, the deficiencies in the application have not been adequately addressed.

(9) The duration of the timber conservation license shall be determined within the Montana Environmental Policy Act (MEPA) process but shall not in any event exceed the period established in 77-1-204, MCA, with respect to the sale, lease or exchange of state trust land.

(10) The salvage and forest management rights associated with a timber conservation license shall be explicitly identified during the MEPA process. These rights shall be incorporated into the license.

(11) The department's environmental analysis shall consider the proposed timber sale with and without the requested timber conservation license.

(12) The timber conservation license application shall be submitted to the state board of land commissioners for its consideration as part of the sale package. (History: 77-5-201, MCA; IMP, 77-5-208, MCA; NEW, 2003 MAR p. 2874, Eff. 12/25/03.)

36.11.453 TIMBER CONSERVATION LICENSE BIDDING AND BONDING (1) Prospective timber purchasers bidding on a sale that contains a request for a timber conservation license must submit two bids, except as specified below. One bid shall be to purchase the full amount of timber offered for sale. The second bid shall be to purchase the full sale less the timber identified by the timber conservation license. If both bids are not received, the bid shall be considered non-responsive. In the event that the timber conservation license application encompasses the entire proposed timber sale area, timber purchasers shall submit a single bid for the entire proposed sale area.

(2) Prospective conservation license bidders may bid only on the area identified in the conservation license.

(3) If no bid above the minimum asking price is received on the portion of the sale designated for harvest, the department will no award a conservation license in lieu of a timber sale. The department will, at its discretion, withdraw the sale or will re-offer the sale including the conservation license in lieu of a timber sale at a lower minimum asking price.

(4) The department shall select the bid or combined bid and timber conservation license that generates the most revenue for the trust beneficiaries.

(5) If the timber conservation license is accepted as the winning bid, the license holder must post a performance bond equal to a minimum of 5% of deferred stumpage value, and shall also pay forest improvement fees as may be required by 77-5-204, MCA.

(a) The purchaser of the timber conservation license shall pay the bond as if it were a timber purchase, based on the bid price.

(b) The license cost shall be prorated over three years to simulate the annual average payments made if the sale were for the harvest of the timber.

(c) The first payment is due upon contract signing and the remaining two payments are due on the anniversary of the contract signing date for each of the next two years.

(d) Forest improvement fees shall be paid in six equal quarterly payments beginning with the first quarter following the bid award.

(e) Other arrangements for earlier payment of forest improvement fees may be made if agreed to by the department and the conservation license purchaser.

(f) The purchaser of the sale or portion of the sale for the purpose of harvesting timber shall pay bonds, forest improvement fees, and stumpage in the usual manner based on a harvest of the reduced volume of timber.

(g) A bond filed in accordance with the provisions of this part may not be released by the department until the rules adopted pursuant to 77-5-208, MCA, and the terms of the timber conservation license have been fulfilled.

(7) The volume of timber associated with the timber conservation license may be counted as part of the annual timber sale requirement for the state timber sale program administered by the department. (History: 77-5-201, MCA; IMP, 77-5-208, 77-5-223, MCA; NEW, 2003 MAR p. 2874, Eff. 12/25/03.)

36.11.454 TIMBER CONSERVATION LICENSE CONDITIONS AND RESTRICTIONS (1) The department or its agents shall make periodic inspections of the timber conservation license area during the term of the license.

(2) The holder of the timber conservation license is required to inform the department of any problem occurring on the area covered by the timber conservation license including but not limited to:

(a) biological infestations;

(b) wind throw; and

(c) fire or other damage.

(3) The timber conservation license shall not impinge upon the proposed timber sale or access to other areas of the timber sale or any future or existing timber sale on this, adjoining properties, or other state trust lands. The department shall look at other reasonable future access alternatives during MEPA analysis and attempt to minimize the potential future impact of department activities on the timber conservation license .

(4) A timber conservation license does not allow any removal or blocking of existing roads or access corridors without the written approval of the department. A timber conservation license does not prohibit the department from adding or improving roads for resource management purposes or eliminating existing roads within the license area.

(5) The timber conservation license holder shall not act in any way that will diminish the monetary value of the timber not harvested pursuant to the terms of the timber conservation license to the trust beneficiaries or any future revenue generation potential of the land covered by the license.

(6) The timber conservation license holder shall not cut trees, live or dead, standing or down, unless prior approval is granted by the department.

(7) The timber conservation license is for conservation purposes only and does not allow any other exclusive or nonexclusive development or use of the license area.

(8) The timber conservation license does not preclude other lawful licensed or permitted uses of Montana's forested trust lands by the state of Montana. (History: 77-5-201, MCA; IMP, 77-5-208, MCA; NEW, 2003 MAR p. 2874, Eff. 12/25/03.)

36.11.455 ASSIGNMENTS (1) Grantees of timber conservation licenses shall apply on the standard application form prescribed by the department. The provisions of ARM 36.25.118 shall apply to assignments under this rule. Assignments must be approved by the department. (History: 77-5-201, MCA; IMP, 77-5-208, MCA; NEW, 2003 MAR p. 2874, Eff. 12/25/03.)

36.11.456 TIMBER CONSERVATION LICENSE CONTRACT TERMINATION (1) All rights conveyed under a timber conservation license return to the state upon the expiration or termination of a timber conservation license.

(2) Conditions for contract termination will be identified during the MEPA analysis. (History: 77-5-201, MCA; IMP, 77-5-208, MCA; NEW, 2003 MAR p. 2874, Eff. 12/25/03.)

## STATE LAND LEASING

36.25.101 QUOTED MATERIAL (1) Material enclosed in quotation marks, with the exception of terms defined in ARM 36.25.102, is taken verbatim from the statutes or constitution of this state as cited following each quotation. (History: 77-1-209, MCA; IMP, 77-1-209, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.102 DEFINITIONS When used in this sub-chapter, unless a different meaning clearly appears from the context:

(1) "Agricultural land" means land which is principally valuable for the production of crops;

(2) "Animal unit" means 1 cow, 1 horse, 5 sheep, or 5 goats;

(3) "Animal-unit-month carrying capacity" (A.U.M.) means that amount of natural feed necessary for the complete subsistence of one animal unit for one month;

(4) "Best interests of the state" means those considerations that will produce the maximum return to the state with the least damage to the long-term productivity of the land;

(5) "Board" means the board of land commissioners of the state of Montana;

(6) "Cabinsite" means land occupied or to be occupied for a non-commercial use as a temporary or principal place of residence, for a single family, or equivalent of the same, and the supporting buildings, in the immediate vicinity;

(7) "Crop" means such products of the soil as are planted and harvested, including but not limited to cereals, vegetables and grass maturing for harvest or harvested, but not including grass used for pasturage;

(8) "Custom farming" means farming for another at a fixed fee. Such fixed fee may not be based on a crop share percentage.

(9) "Department" means department of natural resources and conservation;

(10) "Director" means director of natural resources and conservation, chief administrative officer of the department of natural resources and conservation;

(11) "Full market value" means the most probable price in terms of money that a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus;

(12) "Grazing land" means land which is principally valuable for pasturage or the feeding of livestock on growing grass or herbage;

(13) "Handicapped lessee" means a lessee certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major activities, such as writing, seeing, hearing, speaking, or mobility, and that the limits the lessee's ability to obtain, retain, or advance in employment;

(14) "Land use license" or "license" means a contract by which the department conveys an interest in state lands for a specific term and fee, and for a use other than that for which the land is classified;

(15) "Lease" means a contract by which the board conveys state lands for a term of years for a specified rental, and for the use for which the land is classified;

(16) "Lease fee adjustment" means the process by which the department applies the rental rate contracted in the lease to the most recent appraised market value to determine if it is necessary to alter the annual rental payment. The adjustment will occur at the review period defined in the lease and at the time of renewal;

(17) "Lessee" means the person or persons in whose name a surface lease appears on record in the offices of the department, whether such person or persons be the original lessee or a subsequent assignee. The term "lessee" also includes, where the context of the rule may indicate, any person who is the apparent successful bidder for a surface lease but with whom a formal surface lease has not been completed and finalized;

(18) "Licensee" means the person or persons in whose name a license appears on the record in the offices of the department, whether such person or persons be the original licensee or subsequent assignee;

(19) "Pasturing agreement" means a sublease in which the lessee personally retains full management and control of the land and livestock;

(20) "Person" means any individual, firm, association, corporation, governmental agency or other legal entity;

(21) "Qualified applicant" means any person who has filed an application and who may become a qualified lessee or licensee;

(22) "Standard lease form" means the lease form then currently in use and approved by the board;

(23) "State" means the state of Montana;

(24) "State lands" means all lands for which the surface leasing is under the jurisdiction of the board as defined by 77-1-202, MCA;

(25) "Sublease" means any agreement, written or oral, between a lessee and a third party whereby the third party is accorded the use of all or any part of the lessee's leasehold interest, including pasturing agreements;

(26) "Sublessee" means the person or persons to whom a lessee has leased all or part of the unexpired term of his lease;

(27) "Surface" means the superficial part of land including the soil and waters which lie above any minerals;

(28) "Timber land" means land which is principally valuable for the timber that is on it, for the growing of timber or for watershed protection;

(29) "Tract" means the land or portion thereof as described by a specific lease or license or application for the same;

(30) "Unleased land" means land that is not under lease at the time of an application to lease or land on which the lease has been recently canceled by the department or surrendered by the lessee;

(31) "User" means any lessee, sublessee, licensee, or permittee. (History: 77-1-209 and 77-2-328, MCA; IMP, 77-1-202 and 77-2-318, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; AMD, 1990 MAR p. 2284, Eff. 12/28/90; TRANS, 1996 MAR p. 2384; AMD, 2001 MAR p. 22, Eff. /12/01.)

36.25.103 GENERAL PROVISIONS (1) The board, as established by the constitution of Montana (Article X, Section 4) "has the authority to direct, control, lease, exchange and sell school lands" and other lands granted for the support of education. It has the authority to issue leases for agriculture, grazing, mineral production, cabinsites, and other uses under such terms and conditions as best meet the duties of the board to the various trusts and the state of Montana. The board also has the authority to sell timber and other forest products. The board shall administer state land under the concept of multiple-use management.

(2) Failure to comply with any provisions contained in any rule is grounds for cancellation of the lease, permit or license, or assessment of any other penalty specified herein or by law. The department has the authority to make management decisions to protect the best interests of the state. (History: 77-1-209, MCA; IMP, 77-1-202 through 77-1-204, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.104 ADMINISTRATIVE DETAILS AND INFORMATION (1) General inquiries, applications for leases, easements, land use licenses or permits, improvements, and any questions regarding the leasing or usage of state land may be directed to any of the department offices. Payment of all money required or permitted under these rules or pursuant to the provisions of any surface use shall be made to the department. All checks, drafts and money orders shall be made payable to "Montana Department of Natural Resources and Conservation." Sight drafts will not be accepted.

(2) The department shall maintain records of all state land. Such records shall contain all pertinent information concerning a particular tract of state land. Such records shall be open for public inspection at all times during regular business hours.

(3) Any notice or correspondence required to be sent to a lessee or licensee shall be sent to the name and address appearing on the lease, license or permit form filed in the department records. Correspondence sent by the department to such name and address shall be deemed sufficient notice for all purposes. If the lessee or licensee desires to change such address he must notify the department in writing.

Any change in name of the lessee shall be made only through assignment procedures in ARM 36.25.118. (History: 77-1-209, MCA; IMP, 77-1-301, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

Rule 36.25.105 reserved

36.25.106 TERM OF LEASE OR LICENSE (1) In general, a lease or license for agricultural or grazing lands shall be for a 5 or 10 year period and shall expire February 28, 10 years or less from the beginning date of the lease or license. A cabin-site lease shall be for a period not to exceed 15 years and shall expire February 28, 15 years or less from the beginning date of the lease. In the event the lessee of a cabinsite needs a longer lease period for loan security purposes, the department may grant a cabinsite lease up to a maximum of 25 years. A lease for a use other than agricultural, grazing, cabinsite, or mineral production may be for up to 40 years. Leases for power sites or school sites may be for longer than 25 years.

(2) A land use license may be for a term not to exceed 10 years. (History: 77-1-209, MCA; IMP, 77-6-109, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.107 LEASE AND LICENSE FORMS, BID FORMS, AND BONDING (1) The board must approve all lease forms and changes in lease forms prior to their use. The original of the lease shall be mailed to the lessee and the department shall keep the duplicate original on file.

(2) Leases shall be issued without bond unless required by the board. Licenses shall be issued without bond unless required by the department. If a bond is required it shall be under such conditions and in a form prescribed by the department.

(3) The department reserves the right to add special conditions to a lease or license to protect the interests of the trust and its resources. (History: 77-1-209, MCA; IMP, 77-6-207 MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.108 LANDS AVAILABLE FOR LEASING OR LICENSING (1) Lands available for leasing or licensing under these rules include any state land under the jurisdiction of the board.

(2) The department shall classify and reclassify land in accordance with its capability to support a particular use. The following classes are established in accordance with 77-1-401, MCA:

(a) class 1 shall be grazing land;

(b) class 2 shall be timber land;

(c) class 3 shall be agricultural land;

(d) class 4 shall be cabinsites and land uses other than grazing, timber or agricultural.

(3) This rule shall not be construed to prohibit multiple use management.

(4) In order to insure that any unleased or unlicensed portion of state land is not made more difficult to lease or license, lands shall be leased or licensed in compact bodies and an attempt will be made not to separate parts of any tract from public highways and available water supplies.

(5) Unsurveyed land, including islands, shall be available for leasing or licensing provided that any applicant for a lease or license on such lands shall supply the department with a legal and sufficient description thereof, by courses and distances (metes and bounds). The department shall assume no liability or responsibility for the correctness, completeness and validity of such description. The department shall issue all leases or licenses including unsurveyed lands and islands only under such title as the state of Montana then has or thereafter shall acquire. In the event it is established that the state has less than a fee simple title, it shall not be liable for any refunds or damages.

(6) The department does not guarantee that fences or other boundary indicators on site are a true indication of legal property boundaries. The lessee or licensee may be responsible for the cost of any survey which is made necessary by a challenge to the proper boundary of the state-owned land. Such costs may be considered an improvement on the land. (History: 77-1-209, MCA; IMP, 77-1-401 and 77-1-402, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.109 RECLASSIFICATION (1) Any person desiring to lease a tract of state land or portion thereof for any use other than the present classification must submit an application proposing such alternative use. If such application is received from anyone other than from the existing lessee for a reclassification, then proper notice shall be given to the appropriate lessee. The department shall conduct a capability inventory of the tract, and if it determines such proposed use to be in the best interests of the state, the tract may be reclassified and leased for such alternative use. The person submitting an application for reclassification will be notified of the department's decision at least 90 days prior to the date applications and bids for leases or licenses are due.

(2) Each tract of land reclassified to be leased for an alternative use shall be subject to the bidding procedures for unleased land as described in ARM 36.25.115, except:

(a) where classified grazing land is reclassified to agricultural land upon application of the existing lessee; or

(b) land upon which a cabinsite was in existence on or before October 1, 1983.

(3) Each tract of land to be licensed for a use other than that for which it is reclassified shall be subject to the bidding procedures for unleased or unlicensed land as set forth in ARM 36.25.115.

(4) Prior to the cultivation of any land leased or licensed for grazing purposes, the lessee must apply and receive permission from the department, for reclassification to agriculture as provided in this rule. Failure to obtain written approval before cultivating state land

shall result in either cancellation of the lease or license or a rental of twice the regular agricultural rental on the land illegally cultivated, as provided by 77-6-209, MCA. Such determination shall be subject to the appeal procedures in ARM 36.25.121.

(5) The department reserves the right to reclassify or issue a land use license on, or withdraw all or a portion of land without application which is leased or licensed for grazing, agricultural or timber purposes upon reasonable notice to the user. The lessee shall be entitled to reasonable compensation for any improvements on the withdrawn land and to an adjustment or return payment of rent. (History: 77-1-209, MCA; IMP, 77-1-202, 77-6-206, and 77-6-209, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.110 MINIMUM RENTAL RATES (1) As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. For purposes of this rule a district means the county or counties where the leased lands are located. "The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve such special crop share rentals" as per 77-6-501, MCA.

(2) The department may authorize a lease or license upon other basis than cropshare, but in these cases the rental shall at least equal the value of the usual landlord share prevailing in the district. This may only be accommodated once during the term of the lease unless changes in crops are contemplated. Such rental rate consideration may only be approved by the director upon proper written application by lessee or licensee.

(3) The rental rate for all grazing leases and licenses shall be on the basis of the animal-unit-month carrying capacity of the land to be leased or licensed.

(a) For grazing leases issued or renewed prior to July 1, 1993, until the first date of renewal after July 1, 1993, the minimum rental rate per A.U.M. is the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year multiplied by 6.

(b) For grazing leases issued or renewed between July 1, 1993 and June 30, 2001, until the first date of renewal after July 1, 1993, the minimum rental rate per A.U.M. is the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year multiplied by 6.71.

(c) For all grazing leases issued or renewed after June 30, 2001, and all grazing licenses, the minimum rental rate per A.U.M. is the weighted average price per pound of beef cattle on the farm in Montana, as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year, multiplied by 7.54.

(d) The department shall appraise and reappraise the classified grazing lands and grazing lands within classified forest lands under its jurisdiction in accordance with 77-6-201, MCA, to determine the carrying capacity and shall maintain records of such appraisals in its files. Such determination shall be made from time to time as the department considers necessary, but at least once during the term of every lease or license.

(4) When a lease or license term begins after February 28 but before July 1 during the first year of the lease or license, the lessee or licensee shall pay a rental price equal to the rental price for an entire year. When the lease or license term begins after June 30 but before February 28 of the next year, the lessee or licensee shall pay a rental price equal to of the yearly annual rental. Summer fallowing shall not entitle any lessee or licensee to a refund or reduction of the rental.

(5) A lessee or licensee who grazes the stubble of harvested crops or hayland, or who grazes unharvested or damaged crops or hayland, shall contact the department regarding payment for such grazing on classified agricultural land. The department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under 77-6-507, MCA. Failure or refusal to pay said rental or to notify the department of such grazing may be cause for cancellation of the lease.

(6) Effective January 1, 2001, and retroactive to those cabinsite leases issued between January 1, 1999 and December 31, 2000, and except as provided in (6)(a), the minimum rental rate for a cabinsite lease or license is the greater of 5% of the appraised market value of the land, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, or $250. This rate takes into account all those factors in 77-1-106, MCA, reflecting the costs to the lessee of leasing state land.

(a) For cabinsite leases or licenses expiring after January 1, 2001, and for those leases and licenses whose rates are reviewed from 2003 through 2007, the department shall, when issuing a new lease or license at a rental rate greater than $250 for the same cabinsite, or in reviewing an existing lease or license, calculate the minimum rental rate as 5% of the appraised market value of the land; and

(i) in the first year of the new lease or license, or of the lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, plus 20% of the difference between:

(A) the rental rate paid in the last year of the expired lease or license or lease review; and

(B) the calculated rental rate of 5% of the appraised market value of the land.

(ii) in the second year of the lease or license, or of the lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 40% of the difference between:.

(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and.

(B) the calculated rental rate of 5% of the appraised market value of the land.

(iii) in the third year of the lease or license, or lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 60% of the difference between:

(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and

(B) the calculated rental rate of 5% of the appraised market value of the land.

(iv) in the fourth year of the lease or license, or lease or license review, the department shall collect a rental rate equivalent to the rental rate paid in the last year of the expired lease or license, or lease or license review, plus 80% of the difference between:

(A) the rental rate paid in the last year of the expired lease or license, or lease or license review; and

(B) the calculated rental rate of 5% of the appraised market value of the land.

(v) in each subsequent year for the remaining term of the lease or license, the department shall collect a rental rate equivalent to 5% of the appraised market value of the land.

(b) For cabinsites only:

(i) Any lessee or licensee has 60 days from the expiration or cancellation of the lease or license to remove all improvements from the leased or licensed premises. The removal of improvements must be conducted within the terms of a new land use license, for a fixed sum of 1/6 of the most recent year's lease or license fee of $50, whichever is the greater.

(ii) If the lessee or licensee does not wish to remove the improvements, but rather chooses to be compensated for the improvements, the lessee or licensee shall be responsible for any applicable tax assessments.

(iii) If, after two years of the expiration or cancellation of the lease or license, no new lessee or licensee is found, the department shall provide written notice to the former lessee or licensee that unless the improvements are removed within 60 days, the improvements will become the property of the state.

(iv) If a new lessee or licensee is found within two years of the expiration or cancellation of the lease or license, during the pendency of the improvement valuation process, including arbitration and appeal, the new lessee shall place in escrow an amount equal to the assessed value of the improvements as per department of revenue assessment, plus any applicable tax assessment. Nothing herein will prevent the department from issuing a lease or license to the new lessee or licensee during the pendency of the valuation process.

(v) If, during the two-year period described above, the prior lessee or licensee wishes to remove the improvements, the removal can occur only during those times when the leased or licensed property is not being offered for competitive bid.

(vi) Determination of compensation for improvements through the arbitration process shall utilize standard appraisal procedures giving full consideration to the improvement's condition, its contribution to the value of the property for residential purposes, remaining economic life, and shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.

(7) All other leases of class 4 land other than cabinsite leases shall be based on a determination of fair market value made by the department. This determination shall be made at least once during the term of every lease, and a record made thereof. (History: 77-1-106 and 77-1-209, MCA; IMP, 77-1-106, 77-1-208, 77-6-201, 77-6-501, 77-6-502, 77-6-504, and 77-6-507, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; AMD, 1995 MAR p. 1047, Eff. 6/16/95; TRANS, 1996 MAR p. 2384; AMD, 2001 MAR p. 22, Eff. 1/12/01; AMD, 2001 MAR p. 2030, Eff. 10/12/01.)

36.25.111 COMPETITIVE BIDDING (1) All competitive bids for grazing leases or licenses shall be submitted in the form of $X.XX per A.U.M. In no case may the bid be less than the minimum for that year determined in accordance with ARM 36.25.110. If in any succeeding year of the lease or license the amount bid is less than the minimum for that year, then the rental shall be the minimum. Bids for any lease or license may only be submitted for the present reclassified use unless the bidder submits a proposed reclassified use in accordance with ARM 36.25.109.

(2) Competitive bidding on agricultural leases or licenses shall be submitted based upon crop share rental. No cash bids will be accepted. In no case may the rate be less than the statutory minimum established by the legislature for that year.

(3) All competitive bids for unleased cabin sites shall be submitted in the form of $X per/year. In no case may the bid be less than the minimum rental determined in accordance with ARM 36.25.110. If in any succeeding year of the lease the amount of the lease is less than the minimum for that year, then the rental shall be the minimum.

(4) All competitive bid signatures must be notarized.

(5) Competitive bids on a portion of a lease or license may be allowed upon approval from the department. (History: 77-1-209, MCA; IMP, 77-6-202, 77-6-501, and 77-1-208, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1995 MAR p. 1047, Eff. 6/16/95; TRANS, 1996 MAR p. 2384.)

36.25.112 PAYMENTS - WHEN DUE (1) For grazing leases and licenses, the grazing portion of leases and licenses containing both agricultural and grazing land and agricultural leases not based on a crop share, the department will send written notices to the address on the lease or license beginning in January of each year stating the amount of rental due. The notice shall also state that payment is due by March 1, and if not paid by April 1, the lease or license is canceled. At least two weeks prior to April 1 the department shall send by certified mail to each lessee or licensee who has not made payment a letter notifying the lessee or licensee that the lease or license is canceled if payment is not received or postmarked on or before April 1. If payment is not received or postmarked by April 1, the entire lease is canceled.

(2) For agricultural leases and licenses, and for the agricultural portion of leases and licenses containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, whichever is greater, the rental shall be due immediately after harvesting or before November 15 of the year in which the crop is harvested. The department shall compile a list as soon

as possible after November 15 of those lessees or licensees with agricultural land who have not paid the agricultural rentals. A notice shall be sent to each lessee or licensee on the list by certified mail at least two weeks prior to December 31 advising such lessee or licensee that the lease or license is canceled if payment is not received or postmarked on or before December 31. If payment is not received or postmarked by December 31, the entire lease is canceled. All appropriate seeding and crop reports must be submitted with the payment. Partial payments shall be accepted, however, such payments will not prevent cancellation of the lease or license if full payment as verified on the crop report is not received on the date required by law.

(3) For cabinsite leases or licenses, the department will send written notices to the address on the lease or license beginning in January of each year stating the amount of rental due. The notice shall also state that the payment is due by March 1 and if not paid by April 1, the lease or license is canceled. At least two weeks prior to April 1, the department shall send by certified mail to each lessee or licensee who has not made payment a letter notifying the lessee or licensee that the lease or license is canceled if payment is not received or postmarked on or before April 1. If payment is not received or postmarked by April 1, the entire lease or license is canceled.

(4) When a lease or license takes effect after July 30 and before February 28 of the next year, the lessee or licensee shall pay both the rental for of the yearly rental due and full yearly rental due for the next succeeding year before the lease or license is executed.

(5) If there are special circumstances, a lessee or licensee of agricultural land must write to the department prior to November 1 if they wish an extension for rental payment beyond the December 31 deadline. All extension requests must set forth the reasons for the extension and verification of those reasons by the appropriate sources. In all cases permission for an extension may only be given in writing by the department and such extension may not extend beyond April 1 of the following year.

(6) When the United States is the lessee or licensee of any state land the rental shall not be due until the expiration of each year of the lease or license. (History: 77-1-209, MCA, IMP, 77-6-103 and 77-6-506, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.113 LEASE AND LICENSE REPORTS (1) The lessee or licensee is required to submit various reports on forms supplied by the department, including but not limited to the following:

(a) An agricultural seeding report form shall be completed and returned to the department for each section or portion thereof after planting, but not later than June 15, on all agricultural land. This includes all agricultural leases or licenses including those based on a cash lease/crop-share, whichever is greater.

(b) A crop report form shall be completed and returned to the department on each section or portions thereof, immediately after harvest and marketing, but no later than November 15, on all agricultural land. All elevator checks and stubs shall be included with the report. This includes all agricultural leases or licenses including those based on cash lease or based on a crop share/cash lease, whichever is greater.

(c) Failure to file seeding and crop report forms by the specified date or failure to supply any other information pertinent to the lease or license may result in cancellation of the lease or license subject to the appeal procedures set forth in ARM 36.25.121. (History: 77-1-209, MCA; IMP, 77-1-202 and 77-1-301, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384.)

36.25.114 DISPOSAL OF CROPS (1) The lessee or licensee shall deliver all grain crops to an elevator on or before November 15 in the year of harvest, free of charges, taxes, or assessments to the credit of the state. If elevators cannot accommodate state grain at harvest time, the lessee or licensee shall provide storage free of charge until marketing. Other agricultural crops shall be disposed of at the going market price unless otherwise directed. The department shall permit lessees or licensees to purchase the state's share of all crops; however, department approval is required before a lessee or licensee may purchase state crops. Applications shall be made on the prescribed forms in current use, furnished at no cost by the department. The lessee or licensee shall be required to submit all applicable crop reports, a crop analysis and a certification of market price for the crop from a licensed dealer on forms provided by department. The lessee or licensee shall make full payment within 10 days from the date of certification but no later than November 15. The lessee or licensee may also contract for purchase of state crops; however, all contracts must be approved by the department in advance and filed with the department. Extensions for rental payment may be granted in this instance pursuant to ARM 36.25.112. (History: 77-1-209, MCA; IMP, 77-1-202 and 77-1-301, MCA, NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.115 ISSUANCE OF LEASE OR LICENSE ON UNLEASED OR UNLICENSED LAND AND RECLASSIFIED LAND

(1) A person who desires to lease or license unleased or unlicensed state land may apply on the standard application form prescribed by the department. The application form must be returned to the department and must be accompanied by a nonrefundable application fee. Such application shall be deemed an offer to lease or obtain a license on the land described therein at a rental rate which reflects the fair market value of the lease or license.

(2)(a) When the department receives an application to lease or obtain a license on an unleased or unlicensed tract of land or on a tract which has been reclassified, it shall advertise for written bids on the tract according to the procedures set forth in (c), except in the following circumstances:

(I) where grazing land is reclassified to agricultural land upon application of the existing lessee; or

(ii) where land is reclassified and a licensee applies for a lease on the land for the same use for which he was formerly licensed, or a lessee applies for a license to use the land for the same use for which he formerly leased the land; or

(iii) where the application is for a cabinsite lease or license on a tract of land which was subject to a cabinsite lease or license on or before October 1, 1983.

(b) The department may advertise for bids according to the procedures set forth in (c) in any of the above circumstances where such procedures are deemed by the department to be in the best interests of the state.

(c) When advertisement for bids is called for under this rule, the department shall advertise for written bids on the tract once a week for 2 weeks in the official county newspaper of the county in which the tract lies. The tract will be leased or licensed to the highest bidder unless the board determines that the bid is not in the best interests of the state. All bids shall be sealed bids and will not be opened until a specified time and place. If the high bid is rejected, the board will issue its reason for the rejection in writing. The lease or license shall then be issued, at the fair market value determined by the board, to the first bidder willing to pay the board-determined rental whose name is selected through a random selection process from all bidders on the tract.

(3) The lessee or licensee shall sign and return the lease or license to the department within 30 days of receipt of the lease or license. If the lease or license is not signed and returned to the department within 30 days, the department may re-advertise the lease or license.

(4) Cabinsite leases issued on previously unleased land shall be subject to the bid rental rate for the full term of the lease unless, after 5 years, 5% of the adjusted rental rate as determined by ARM 36.25.110 is higher, and then the lessee or licensee shall pay the higher rate.

(5) When a lease or license is canceled by the board or department or surrendered by the lessee or licensee, the department shall attempt to release or relicense the land. The department shall advertise for written bids on the tract, and application and bid forms will be mailed to all persons who have expressed in writing an interest in leasing or licensing the land. The department shall receive applications and bid forms from potential lessees or licensees for a reasonable time after the date on which the first such application and bid form is mailed, and the land will be leased or licensed in accordance with (1) and (2).

(6) Any person who has had his lease or license canceled and not reinstated by the board or department for any reason except nonpayment of rentals shall not be allowed to bid upon the lease or license or upon any lease or license for land managed by the department. If no other bids are received, the former lessee or licensee may be allowed to bid, but the board may reject any or all bids from a lessee or licensee who has had his lease canceled in the past. (History: 77-1-209, MCA; IMP, 77-6-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.116 ISSUANCE OF LEASE OR LICENSE ON LAND CURRENTLY UNDER LEASE OR LICENSE (1) Any interested person may request notice of the expiration of any lease or license. Such requests shall be in writing and shall include an adequate description of the state land involved and the address of the person requesting notice. An application and bid form will be mailed to the last known address of each person requesting notice, allowing reasonable time for response.

(2) A person who desires to lease or obtain a license on state land currently under lease or license shall apply for such lease or license in the manner specified in ARM 36.25.115, and the application shall be accepted under the same conditions as specified in that rule. An application fee will be required and applications for land currently under lease or license will only be accepted after December 1 of the year preceding the expiration of the current lease. Application forms must be postmarked on or before January 28 of the year in which the lease expires. Only applications on the standard application form will be accepted.

(3) Any person who desires to bid must submit such bid along with his completed application form. The bid shall be in writing on the form prescribed by the department and then in current use. Blank forms may be secured from the department at no cost. Once a bid has been submitted to the department and opened it may not be withdrawn except for good cause as determined by the department. All bids shall be sealed bids and will not be opened until a specified time and place. A certified check, cashier's check, or money order in an amount equal to $1 per acre for each acre of agricultural land and 20% of the annual rental bid for grazing and all other leases or licenses must be submitted as a deposit with any bid along with the nonrefundable lease or license application fee. The deposit of any unsuccessful bidder shall be returned when the lease or license is issued. The deposit or a portion thereof may be forfeited if the department determines that the bid which has been submitted is frivolous, forged, a bad faith bid, or a bid submitted for purposes of harassment.

(4) The high bidder for the lease or license of the land described in the application shall be deemed to have leased or licensed such land at the rental price bid by him, subject to the preference right of the current lessee as described in ARM 36.25.117; however, the board may withdraw any land from further leasing or licensing for such period as the board determines to be in the best interests of the state.

(5) All lessees or licensees shall sign and return the lease to the department within 30 days of receipt of the lease. Failure to return the lease or license within 30 days may be cause for cancellation and re-advertisement. (History: 77-1-209, MCA; IMP, 77-6-205, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.117 RENEWAL OF LEASE OR LICENSE AND PREFERENCE RIGHT (1) The board retains the right to select the best lessee possible to fulfill the operating obligations under any lease. In the exercise of the board's discretion to select the best lessee possible for agriculture and grazing leases, the board recognizes that retention of stable, long-term lessees who are familiar with the operating history and characteristics of the lease promotes good stewardship of the land. Such security of land tenure encourages the lessee to place and develop improvements which, in turn, increases the productivity of the land and improves its management. Consequently, it is the board's policy to allow an incumbent lessee in good standing, a preference right to meet the high bid and retain the lease.

(2) A current lessee or licensee shall be sent an application to renew his lease or license if he has paid all rentals due. The application shall be accepted under the same conditions as specified in ARM 36.25.115; however, applications for renewal will only be accepted after December 1 of the year preceding the expiration of the lease or license and must be postmarked on or before January 28 of the year of expiration of the lease or license. Failure to submit a renewal application by the lessee or licensee postmarked on or before January 28 will result in an unleased or unlicensed tract and will be subject to the requirements for leasing or licensing an unleased or unlicensed tract under ARM 36.25.115.

(a) If competitive bids have been submitted for such tracts before January 28 and the lessee or licensee has not submitted a renewal application, the bids shall remain confidential and may be returned to the bidder. The tract(s) will then be advertised for bids to qualified bidders as provided under ARM 36.25.115.

(3) Unless the board decides on its own volition and sole discretion that a lease should be given to a better qualified applicant, a surface lessee or licensee who has strictly complied with the applicable conditions set forth in 77-6-113(1), MCA, has a preference right to meet the high bid offered for the lease or license and may retain the lease or license subject to the provisions in (8), if all rentals have been paid and appropriate reports submitted and (4) has not been violated. When an agricultural lessee or licensee meets the high bid and retains his lease or license, the new rental rate must be paid for all crops harvested after the renewal date even if such crops were planted before the lessee met the high bid. The lease or license shall be renewed at the fair market rental provided no other applications for the lease or license have been received by the department within the time limits as set forth by ARM 36.25.116(2). Grazing or agricultural uses on classified forest lands may be terminated if it is determined that the resources under that classification are being damaged or not perpetuated.

(a) A cabinsite lease is not subject to bids upon renewal if the lessee continues the lease and the lessee has paid all rentals and (4) is not violated. The lease shall be renewed at the rental provided by law.

(b) If, during the previous lease term, an existing lessee has violated any condition set out within 77-6-113(1), MCA, the lessee shall not have the right to renew the lease or match any other bids submitted. The department shall notify the lessee if it determines that they have failed to comply with the requirements of 77-6-113(1), MCA. The notice shall include the factual basis for that determination.

(c) The lessee may, within 15 days of receipt of the notice, appeal the decision by requesting an informal hearing before the director or his designee. Any individual conducting the hearing shall not have been involved in the original determination to revoke the lessee's preference right. If the director, or his designee, concludes that the conditions under 77-6-113(1), MCA, have not been met by the lessee during the previous terms, no preference right shall be recognized. The renewal lease shall then be advertised for competitive bids as provided in ARM 36.25.115.

(d) No applicant shall have the right to seek an administrative hearing to challenge the award of a lease to any lessee chosen by the board under this rule or the board's policies.

(4) For leases or licenses issued for a new lease or license term beginning in 1987 and thereafter, a lessee or licensee who subleases more than 1/3 of the land under the lease or license may not exercise the preference right at lease renewal if he has subleased the land for more than two years during the term of the lease or license. If such lessee or licensee subleases more than 1/3 of the land for more than three years during the term of the lease, the department shall cancel the lease.

(a) For all leases and licenses the lessee or licensee may sublease the land for a period of not more than five years without losing the preference right or subjecting the lease to cancellation during the term of the lease, if the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(b) A lessee or licensee who has accorded another the use of all, or a portion of, the allowable A.U.M.'s during one year will be deemed, for the purposes of these rules, to have subleased the entire tract for that year.

(c) The provisions of this rule which state that a preference right will be lost, or that a lease will be canceled for subleasing, do not apply in those instances where the approved sublease involved 1/3 or less of the total acreage in the lease or license, or where the sublease is considered to be a pasturing agreement pursuant to ARM 36.25.120.

(5) If a lease or license is renewed pursuant to the preference right and it is later discovered that the lessee or licensee was not entitled to exercise such preference right pursuant to (4) during the prior lease or license term, then the renewed lease or license shall be canceled and readvertised for lease or license. However, the department will retain all rentals paid until the time the renewed lease or license is canceled. The prior lessee or licensee shall be allowed to bid in this instance.

(6) An exchange of use involving state lands is considered to be a sublease and subject to all the provisions of law which apply to other types of subleases.

(7) A surface lessee or licensee who has lost the opportunity to exercise a preference right because of a sublease or other arrangement may apply to the director and set forth the specific grounds why the lessee or licensee is entitled to a hearing. Such application for the hearing must be submitted in writing to the director within 15 days of receipt of notice of loss of preference right by the lessee or licensee. If the grounds include a bona fide factual dispute, the director shall order a hearing within 20 days. When such a hearing is granted the contested case provision of the Montana Administrative Procedure Act shall apply. The board shall make a final decision after considering the entire record or may delegate such authority to the director. The director may appoint a hearings examiner to conduct the hearing and produce proposed findings of fact, proposed conclusions of law, and a proposed order. The hearings examiner may be from the department's staff or from another source.

(a) If a surface lessee or licensee has lost the opportunity to exercise a preference right because of a sublease or other arrangement and disputes only the legal ground upon which the rights were lost, then the lessee or licensee may apply to the director for a declaratory judgment concerning legal grounds. Such application for declaratory judgment must be submitted in writing to the director within 15 days

of receipt of notice of loss of preference right by the lessee or licensee. The application shall specify the legal grounds which the lessee or licensee disputes. The procedure of applying for and issuing such a declaratory judgment shall be that set forth in the Montana Administrative Procedure Act.

(8) If other applications are received by January 28 of the year the lease or license expires, and the lessee or licensee has not violated (4) or 77-6-113(1), MCA, the lessee or licensee shall have a preference right to renew his lease or license provided he meets the high bid for such lease or license. Such bid is deemed to be met if the amount of the high bid is received by the department prior to the expiration of the lease or license or, in the case of agricultural land leased solely on a crop share rental basis, if the lessee or licensee agrees in writing to meet the high bid prior to the expiration of the lease or license.

(a) A lessee or licensee who believes the bid to be excessive may request in writing a hearing before the director after he meets the high bid. The request for a hearing must contain a statement of reasons and supporting evidence why the lessee or licensee believes the bid not to be in the state's best interest, because it is above community standards for a lease of such land; or would cause damage to the tract; or impair its long-term productivity. The lessee or licensee shall also submit evidence of rental rates for similar land in the area with his request.

(b) The director may grant or deny a request for a hearing. If a hearing is granted, the director shall consider testimony and evidence from the lessee and high bidder regarding the rental rate. The lessee and high bidder may also provide a basis for why they should be selected as the best lessee by the board. In order to determine the best lessee possible, the director may request information from the bidder and the current lessee. This information may include:

(i) an intended grazing or cropland management plan for the new term of the lease;

(ii) experience associated with the classified use for the land;

(iii) other nonstate lands that are fenced and managed in common with the state land;

(iv) intended grazing or cropland improvements that will benefit the health and productivity of the state land;

(v) a weed management plan;

(vi) management goals and objectives and monitoring procedures to determine if they are being met;

(vii) the method or route used to access the state land;

(viii) any other information the director deems necessary in order to provide a recommendation to the board; and

(ix) the department may incorporate all or part of this information as terms and conditions in the new lease agreement.

(c) The director shall recommend to the board whether there should be a reduction to the bid rate, and who should be selected as the lessee. The director may recommend to the board that the bid be lowered only if he feels that it is in the best interests of the state to do so. The hearing is not subject to the Montana Administrative Procedure Act. The board may accept or reject the director's recommendation.

(d) The lessee is obligated to lease or license the property at the rate determined by the board. It is the duty of the board to achieve fair market value. The lease or licensing of such land shall be such so as to generate revenue commensurate with the highest and best use of the land or portions thereof, as determined by the department.

(9) Regardless of any provision to the contrary in these rules, at renewal time the board may withdraw any land or portion of land from further leasing or licensing for an indefinite period. The department may provide in any lease or license at the time of execution or renewal that the land may be withdrawn from further leasing or licensing after reasonable notice if the department considers such action to be in the best interests of the state.

(10) When land under lease or license has previously been sold and the certificate of purchase has been canceled, any later reinstatement of the certificate of purchase shall not have the effect of canceling any lease or license except that the current lessee or licensee shall lose his right to renew the lease. (History: 77-1-209 MCA; IMP, 77-6-205, 77-6-208, 77-6-210, 77-6-212, and 77-2-333, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384; AMD, 2004 MAR p. 2918, Eff. 12/31/04.)

36.25.118 ASSIGNMENTS (1) Lessees or licensees desiring to assign a lease or license may apply on the standard application form prescribed by the department. No assignment will be approved unless it is made upon the form prescribed by the department. An assignment in order to be binding on the state must be approved by the department. An assignment will not be approved if all rentals or payments due have not been paid or the terms of the lease or license have been violated. The department may disapprove any assignment application which is not in the best interests of the state. The state will not approve the assignment of any lease or license which is subject to a pledge or mortgage without first notifying the pledgee or mortgagee in writing. If an assignment is made upon terms less advantageous to the assignee, than terms given by the state, the assignment shall not be approved. Assignments which result in a profit to the assignor over and above the value of improvements may result in cancellation of the lease subject to the appeal procedures under ARM 36.25.121. An assignment which is signed by both parties shall be construed to be conclusive proof that all payments for improvements have been paid to the assignor from the assignee. The department will not approve conditional assignments. Such transactions may only be accommodated through the subleasing procedure contained in ARM 36.25.119. The department will only accept assignments containing the original signatures of all appropriate parties.

(2) No assignment or series of assignments will be recognized by the department if the assignment is solely an attempt to avoid the loss of the preference right. (History: 77-1-209, MCA; IMP, 77-6-208, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384.)

36.25.119 SUBLEASING (1) A lessee or licensee desiring to sublease may apply on the standard application form prescribed by the department. A sublease in order to be legal must be approved by the department. A sublease will only be approved if all rentals or other payments or reports due have been submitted, and if the terms of the lease or license have not been violated. If a sublease is made on terms less advantageous to the sublessee than terms given by the state or without filing a copy of the sublease and receiving the department's approval, the director shall cancel the lease or license subject to the appeal procedures provided in ARM 36.25.121.

(2) The sublessee may only compensate the lessee based upon a $/A.U.M. rate for grazing lands, or a crop share, or cash basis on agricultural land depending upon the terms of the state lease. In other words, the lessee may only be compensated upon the same unit of measurement as the lessee's rental to the state is based. Such rate may not exceed the rate charged by the state for such lease. Failure to comply with this provision may be grounds for cancellation of the lease pursuant to ARM 36.25.121.

(3) The subleasing of state land may result in loss of preference right to meet the high bid offered for the lease or license at renewal, as provided in ARM 36.25.117 and 77-6-208 and 77-6-212, MCA. In addition, pursuant to the same rules and statutes, subleasing may cause the loss of the lease.

(4) A lessee or licensee of state land shall not sublease such land as part of the sale of his own fee lands or the sale of any improvements, crops, or leasehold interest. To transfer such lease or license as part of the sale of lands, improvements, crops, or leasehold interest, the lessee or licensee must assign the lease or license as provided in ARM 36.25.118. Failure to comply with the terms of this rule shall be grounds for cancellation of the lease or license, subject to appeal procedures in ARM 36.25.121.

(5) The lessee or licensee is responsible for the actions of the sublessee. Any action committed by the sublessee which if committed by the lessee or licensee would result in cancellation of the lease or any other penalty will be deemed to have been committed by the lessee or licensee.

(6) Custom farming shall not be considered a subleasing situation for the purposes of these rules. Management of the lease or license must be exercised at all times by the lessee or licensee. Failure to provide such management in the absence of an approved sublease may be sufficient grounds for cancellation of the lease or license and/or loss of the preference right at the time of renewal. The state shall not be subject to any reduction in rentals due to custom farming methods. Lessees engaged in custom farming shall file a copy of the custom farming agreement with the department. Such agreement shall set forth the names of the parties involved, the cost of services rendered, the duration of the agreement, and the state leases or licenses involved. Under no circumstances may the cost of services be based upon a percentage of the crop grown on state lands.

(7) If livestock are present on state land, there will be a presumption that the livestock either belong to the lessee or licensee, or that such livestock were placed on the state land with the lessee's or licensee's permission. (History: 77-1-209, MCA; IMP, 77-6-113, 77-6-208, 77-6-210, and 77-6-212, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384.)

36.25.120 PASTURING AGREEMENTS (1) A lessee or licensee who has filed and obtained approval for an annual pasturing agreement prior to entering into such agreement shall be exempt from ARM 36.25.117 if he has complied with the terms of such agreement as approved by the department. Such pasturing agreement shall allow a lessee or licensee to take in livestock belonging to another individual on state land if the lessee or licensee personally retains management and physical control of the land and livestock associated with the utilization of the lease or license.

(2) "Management" as used in these rules means (as provided in 77-6-212, MCA), but is not limited to:

"(a) Providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

"(b) Making all decisions regarding rotation or other placement of livestock on state land;

"(c) Making all decisions regarding turn-in and turnout dates of the livestock on state land; and

"(d) Making all decisions regarding proper range management, including placement of water, fencing, and salt."

(3) The lessee or licensee in addition to the lease or license rental rate may charge a management fee when there is an approved pasturing agreement, but may not charge a management fee which exceeds the minimum grazing rental as set forth in 77-6-506, MCA, for a lease or license of the same type and A.U.M. capacity. In addition, the management fee may only reflect the A.U.M.'s utilized by the sublessee's livestock. All such management fees shall be based upon a per A.U.M. basis. No other basis for payment of management fees will be approved by the department. The owner of the livestock may pay for veterinarian or artificial insemination costs, and such costs shall not be considered part of the management fees. There must be a separate pasturing agreement for each sublessee. The pasturing agreement shall be on a form furnished by the department and shall state the rate charged for grazing on an A.U.M. basis and the amount of the management fee if any. The agreement must be signed by the lessee or licensee and sublessee, and be notarized and approved by the department. The department may charge a filing fee for such agreement. Failure to obtain an approved pasturing agreement may result in cancellation of the lease under ARM 36.25.121.

(4) A pasturing agreement will not be approved if the lessee or licensee employs hired help that have retained a personal interest in more than 1/3 of the livestock being grazed on the state land. Such an arrangement shall be considered a sublease.

(5) All pasturing agreements must have a term within March 1 and February 28 (or 29 on leap year) of the following year. Pasturing agreements may last any duration less than 1 year, but may not last more than 1 year. Each lease or license must have a separate pasturing agreement. (History: 77-1-209, MCA; IMP, 77-6-208 and 77-6-212, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384.)

36.25.121 CANCELLATION OF LEASE OR LICENSE (1) The department may cancel any lease or license if the lessee or licensee commits fraud or misrepresents facts to the department which, if known, would have had an effect on the issuance of the lease or license, uses the land for any purpose not authorized in the lease or license, or violates the terms of the lease or license or these rules, fails to manage the land in a husband-like manner consistent with conservation of the land resources and the perpetuation of its productivity, or for any other reason provided by law. The lessee or licensee of a canceled lease or license shall not be entitled to any refunds or exemptions from any payments due to the state.

(2) As provided in 77-6-211, MCA, the department shall immediately notify the lessee or licensee by certified mail of the cancellation and the reason for it, and the lease or license shall be deemed canceled 15 days after such notice is received by the lessee or licensee, unless the lessee or licensee files a notice of appeal with the department prior to the expiration of the 15-day period, in which case the lease or license remains in effect until the board decides the matter. Within 10 days after receipt of notice of appeal the department shall notify the lessee or licensee of the time and place of the hearing before the board. The time and place of the hearing may be changed by the board after 10 days notice to the lessee or licensee. The board shall conduct an open hearing under the rules set out in the Montana Administrative Procedure Act, 2-4-101 et seq., MCA. A hearings examiner may be appointed to conduct the hearing. The burden of proof to show why the lease or license should not be canceled shall be borne by the lessee or licensee. The board may reinstate the lease or license where it finds that the violation is not serious enough to warrant cancellation and restore all rights and privileges upon payment of a penalty up to 3 times the annual rental against the lessee or licensee. Payment of the penalty may be considered as a notice of appeal for the purpose of keeping the lease in effect until the board decides the matter. If the board does not reinstate the lease or license, the land shall be re-advertised for lease or license in accordance with ARM 36.25.115. (History: 77-1-209, MCA; IMP, 77-6-210 and 77-6-211, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384.)

36.25.122 MORTGAGES AND PLEDGES (1) As provided in 77-6-401 through 77-6-404, MCA, state land leases or licenses and leasehold interests may be pledged or mortgaged by the lessee or licensee. The pledgee or mortgagee shall file the pledge or mortgage or certified copy thereof with the department within 30 days of its receipt by him. Within 30 days after payment of the indebtedness, termination of the pledge agreement, or release of the mortgaged leasehold interest, the lessee or licensee shall file proof of that fact with the department.

(2) If a lessee or licensee mortgages his leasehold interest in state lands pursuant to 77-6-401, MCA, then there must be an assignment, signed by the lessee or licensee/mortgagor and the mortgagee, and placed in escrow. A copy of such escrow assignment must be filed with the department. An assignment is effective for the lease term during which it is made and any subsequent renewal term as long as the assignor continuously holds the lease. Failure to execute the terms of this rule shall be cause for the department not to recognize the mortgage. (History: 77-1-209, MCA; IMP, 77-6-401 through 77-6-404, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; AMD, 1991 MAR p. 444, Eff. 4/12/91; TRANS, 1996 MAR p. 2384.)

36.25.123 ESTATES (1) In the event of a lessee's or licensee's death, the lease or license shall be transferred to the decedent lessee's or licensee's estate. The department shall consider the estate to be the lessee or licensee until such time as proof of different ownership is received by the department. In most cases the department shall require a copy of the decree of distribution or assignment by a court-appointed personal representative. Exceptions to this rule may be allowed when the department determines that an unusual situation exists.

(2) All provisions of these rules, including but not limited to: leasing, licensing, subleasing, reporting, assignments, and payments; also apply to leases or licenses held by a decedent's estate. (History: 77-1-209; IMP, 77-6-208, 77-6-401 and 77-6-402, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.124 SURRENDERS AND CONSOLIDATION OF LEASES OR LICENSES (1) A lessee or licensee who wishes to surrender his lease or license in whole or in part must submit a request to the department for approval. Also upon request, 2 or more leases or licenses may be combined when held by the same lessee or licensee. The request from the lessee or licensee must be in writing and if approved, the leases or licenses will be combined with the lease or license which expires first so that no lease or license shall run longer than its prescribed term. The department may combine leases or licenses at renewal when such action is in the best interest of the state. (History: 77-1-209, MCA; IMP, 77-1-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.125 IMPROVEMENTS (1) A lessee or licensee may place improvements on state land which are necessary for the conservation or utilization of such state land with the approval of the department; however, only a single one-family residence will be permitted on each cabinsite lease. The lessee or licensee shall apply for permission prior to placing any improvements on state land on the form prescribed by the department and then in current use. Blank forms shall be available at no cost. A lessee or licensee will not be entitled to compensation by a subsequent lessee or licensee for improvements which are placed on the land after May 10, 1979, and which are not approved by the department. Proof of the date of placement of improvements may be required by the department. Any improvements or fixtures paid for by state or federal monies shall not be compensable to the former lessee or licensee.

(2) It shall be the responsibility of the lessee or licensee to notify the new lessee or licensee of the improvements on the lease or licensed tract and the value of such improvements. Prior to the issuance of a new lease or license a new lessee or licensee shall prove that he has offered to pay or has paid the former lessee or licensee the value of the improvements and fixtures either as agreed upon with the former lessee or licensee or as fixed by arbitration or that the former lessee has decided to remove the improvements and fixtures from the lease or license. However, if the improvements and fixtures become the property of the state because the former lessee or licensee has failed to act within 60 days after expiration of the lease, then the new lessee or licensee shall not be required to prove that he (she) has offered to pay the former lessee or licensee for such improvements and fixtures. The department may require a written notice from the former lessee or licensee stating that he has been paid for or is removing the improvements and fixtures. If the former lessee or licensee does not agree on the value of the improvements and fixtures or begin arbitration procedures within 60 days after the expiration of the lease or license, then all improvements and fixtures remaining shall become the property of the state. This applies to permanent as well as movable improvements. The 60-day period for removal of improvements may be extended by the department upon proper written application.

(3) When the former lessee or licensee wishes to sell improvements and fixtures, and the new lessee or licensee wishes to purchase such improvements and fixtures, and the parties cannot agree upon a reasonable value, such value shall be determined by arbitration. When the new lessee or licensee does not wish to purchase the movable improvements and fixtures, then the former lessee or licensee shall remove such improvements immediately. Extensions for removing these improvements for good cause may be granted by the department.

(4) In case of arbitration, the lessee or licensee, or purchaser and the former lessee or licensee, shall each appoint an arbitrator with a third arbitrator appointed by the two arbitrators first appointed. No party may exert undue influence upon the arbitrators in an effort to affect the outcome of the arbitration decision. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director, the director may appoint an arbitrator for that party. The value of the improvements and fixtures shall be fixed by the arbitrators in writing and submitted to the department and such determination shall be binding on both parties; however, either party may appeal the decision to the department within 10 days of the receipt of the arbitration decision by the department. If any relevant portion of the arbitration decision is vague or unclear, then the department may ask for written clarification of the intent of the arbitration panel. Upon appeal by either party, the department may examine such improvements to determine the value of the improvements and fixtures and the department's determination shall be final. The determination of the value of improvements by the department shall be limited to those im-

provements involved in the arbitration. The department shall charge the cost of its examination to the party or parties in such proportion as justice may require. The compensation for the arbitrators shall be paid in equal shares by both parties. If the former lessee or licensee refuses to pay his share of the cost of arbitration, then those costs may be deducted from the value of the improvements and fixtures. If the new lessee or licensee refuses to pay the cost of arbitration, the lease or license shall not be issued and the bid deposit shall be forfeited to the department, and the lease or license shall be put up for bid to qualified bidders.

(5) The lessee or licensee shall pay the former lessee or licensee for the improvements and fixtures within 30 days after the value has been determined. Failure to pay the former lessee or licensee within 30 days shall result in rebidding of the lease or license in accordance with ARM 36.25.115 and the bid deposit shall be forfeited. The department may grant an extension in writing under special circumstances.

(6) Summer fallowing, necessary cultivation done after the last crop grown, seeding and growing crops shall all be considered improvements. The value of seeded acreage and growing crops shall be limited to costs for seeding, seedbed preparation, fertilization and agricultural labor at the prevailing rate in the area. The former lessee's or licensee's anticipated profit shall not be included in such value. If the parties can-not agree on the value of seeded acreage or growing crops, the arbitration procedure set out in (4) shall be followed. The original breaking of the ground shall also be considered an improvement; however, if 1 year's crops have been raised on the land, the value shall not exceed $2.50 per acre and if 2 year's crops have been raised, there shall be no compensation. (History: 77-1-209, MCA; IMP, 77-6-301 through 77-6-306, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.126 CONSERVATION MEASURES (1) A lessee or licensee shall not destroy, obliterate, damage or allow the same of any conservation measures placed on state lands. Failure to comply with this rule may result in the cancellation of the lease or license. In addition, the lessee or licensee may be required to replace such conservation measures that may have been destroyed, obliterated, or damaged to department specifications.

(2) A lessee or licensee shall not be entitled to compensation for those conservation or improvement measures placed on state lands using state or federal monies, except for the amount the lessee or licensee personally expended on such measures. Proof of payment may be required. (History: 77-1-209, MCA; IMP, 77-1-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.127 DOMESTIC SHEEP GRAZING IN BIGHORN SHEEP HABITAT (1) If a lessee/licensee has not grazed domestic sheep on the state tract at any time during the previous 10 years, and if the lessee/licensee requests a change to domestic sheep, then the department shall prepare a Montana Environmental Protection Act (MEPA) document at the appropriate level of review to examine the environmental impacts. In preparing the document, the department shall consult with the department of fish, wildlife and parks and the lessee/licensee and shall seek comments and interface as necessary with surrounding landowners and any interested public groups to design appropriate measures under the law.

(2) The department may allow grazing of domestic sheep on state lands within or adjacent to officially identified bighorn sheep ranges if bighorns are separated by a protective geographic buffer or if other applicable mitigation measures to minimize contact are negotiated and implemented. (History: 77-1-209, MCA; IMP, 77-1-203, MCA; NEW, 1998 MAR p. 1414, Eff. 5/29/98.)

36.25.128 SALES (1) The board may sell any land under lease or license under the same terms and conditions as land not under lease or license. The board shall notify the lessee prior to such sale and at least six months prior to possession being given to the purchaser or as consistent with the applicable lease agreement. The lessee or licensee shall be entitled to compensation for improvements as provided in ARM 36.25.125. The purchaser will be given possession of land sold on March 1 next succeeding the date of the sale unless the lease or license expires prior to that date or the lessee or licensee and purchaser agree in writing on another date. (History: 77-1-209 and 77-2-328, MCA; IMP, 77-2-326, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384; AMD, MAR 2004 p. 2399, Eff. 10/8/04.)

36.25.129 SALE OF CABINSITES AND CITY OR TOWN LOTS: APPLICATION AND NOTICE PROCEDURES (IS HEREBY REPEALED) (History: 77-2-328, MCA; IMP, 77-2-318 and 77-2-319, MCA; NEW, 1990 MAR p. 2284, Eff. 12/28/90; TRANS, 1996 MAR p. 2384; REP, MAR 2004 p. 2399, Eff. 10/8/04.)

36.25.130 SALE OF CABINSITES AND CITY OR TOWN LOTS: BIDDING AND FINAL BOARD DETERMINATION (IS HEREBY REPEALED) (History: 77-2-328, MCA; IMP, 77-2-318 and 77-2-321, MCA; NEW, 1990 MAR p. 2284, Eff. 12/28/90; TRANS, 1996 MAR p. 2384; REP, MAR 2004 p. 2399, Eff. 10/8/04.)

36.25.131 SALE OF CABINSITES AND CITY OR TOWN LOTS : IMPROVEMENTS (1) If the lessee is not the purchaser, the lessee must remove all his movable improvements by March 1 following the sale or a later date allowed by the department for good cause shown unless he and the purchaser reach an agreement that some or all of them will remain. The lessee may remove any building which he has designated for removal in his application for sale. Removal must be completed by the August 1 following the date the purchaser takes possession of the property, which is March 1 following the sale. The lessee must leave all other permanent improvements unless he and the purchaser agree otherwise.

(2) The purchaser must, in accordance with 72-2-325, MCA, reimburse the lessee for all permanent improvements that he chooses to leave. If the lessee and purchaser cannot agree on the value of the improvements, the parties shall engage in the arbitration process described in 77-6-306, MCA. If the arbitration process is not completed within 6 months or a reasonable time determined by the

department, the improvements become the property of the department. The department shall then determine the value of the improvements, obtain that amount from the purchaser, and reimburse the lessee.

(3) If the lessee removes any permanent improvements, he shall reclaim the site by removing any foundations and hazards and by filling with suitable material any pits or excavations that result from removal of the improvement. (History: 77-2-328, MCA; IMP, 77-2-318 and 77-2-325, MCA; NEW, 1990 MAR p. 2284, Eff. 12/28/90; TRANS, 1996 MAR p. 2384.)

36.25.132 WEEDS, PESTS, AND FIRE PROTECTION (1) A lessee or licensee of state land shall keep the land free of noxious weeds and pests and assume responsibility for fire prevention and suppression necessary to protect the forage, trees, and improvements. The lessee or licensee shall perform these duties at his own cost and in the same manner as if he owned the land. The lessee or licensee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user, except that he or she shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority or both, as circumstances dictate. In the event that any state land shall be included in a weed control or weed seed extermination district, the lessee or licensee shall be required to comply with 7-22-2149, MCA, which requires that the lessee or licensee be responsible for all assessments and taxes levied by the board or county commissioners for the district. The lessee or licensee of state land must comply with Montana County Noxious Weed Management Act under Title 7, chapter 22, part 21, MCA. Failure to comply with this rule may result in cancellation of the lease or license, subject to the appeal procedures provided in ARM 36.25.121. (History: 77-1-209 and 77-2-328, MCA; IMP, 77-6-114 and 77-6-210, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

36.25.133 RESERVATIONS (1) The state reserves to itself and its representatives and authorized lessees and licensees the right to enter upon state lands for the purposes contained within the lease or license. The state also reserves the right for itself and representatives to enter upon state lands for any lawful purposes including inspections.

(2) Representatives of the Montana historical society have the right to enter any state lands at any reasonable time, upon notification to the department, to perform their duties in connection with the State Antiquities Act, Title 22, chapter 3, part 4, MCA. Any person discovering an object or site of historic, prehistoric, archeological, paleontological, scientific, architectural, or cultural interest on state land shall report such discovery to the Montana historical society and the department and take all steps necessary to preserve such site or object. Willful abuse of such sites or objects may constitute sufficient grounds for cancellation of the lease or license.

(3) The state reserves the right to sell or otherwise dispose of any interest other than that for which the lessee or licensee has leased or licensed the premises, including hunting or fishing access privileges on state land; however, the lessee or grazing licensee may post state land using blue paint to prevent trespass by unauthorized persons but may not use any other method, including orange paint, to post the land. Posting with blue paint must meet the same requirements as are imposed by 45-6-201, MCA, for posting of private land with fluorescent orange paint. (History: 77-1-209, MCA; IMP, 77-1-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1994 MAR p. 33, Eff. 10/29/93; TRANS, 1996 MAR p. 2384.)

36.25.134 WATER RIGHTS (1) If a water right is or has been developed on state land by the lessee or licensee for use on the leased or licensed land, such water right shall belong to the state. The lessee or licensee shall be entitled to compensation for the reasonable value of the improvements associated with the water right by any new lessee, licensee, or purchaser if such improvements are sold to a new lessee or licensee or purchaser as provided in ARM 36.25.125. This shall not be construed to make the state liable for the value of any water right. Any water rights hereafter secured by the lessee and licensee on state lands shall be secured in the name of the state of Montana.

(2) A lessee or licensee of state-owned land may not sell or otherwise dispose of a state-owned water right for any purpose. Such practices may constitute sufficient grounds for cancellation of the lease or license. (History: 77-1-209, MCA; IMP, 77-1-202 and 77-6-115, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.135 EASEMENTS (1) The state reserves to itself the right to grant easements for public purposes on state lands, the surface of which is leased or licensed. The board may grant easements upon state lands without the prior consent of a lessee or licensee. However, the board will require the grantee to compensate the lessee or licensee for damages to improvements, crops or the leasehold interest and file proof of that fact with the department prior to the granting of such easement. When the grantee and lessee or licensee cannot agree on just settlement for damages, the arbitration procedure set forth in ARM 36.25.125 shall be followed to arrive at a just settlement. If an easement limits the use by a lessee or licensee the lease or license shall be adjusted to reflect the loss of use.

(2) Any person desiring an easement for public purposes shall apply to the department on a form prescribed by the department. The applicant shall pay full market value for the interest disposed of. The easement shall terminate when the land ceases to be used for its specified public purpose unless the easement is authorized by the board for a specific term. The department shall terminate the easement by notifying the grantee at his last known address that the public purpose has ceased or the specified term has expired. If the easement ceases to be used for the specified use, the grantee shall notify the department of the termination of the easement. The applicant shall be required to comply with the Montana Antiquities Act and all rules promulgated thereto.

(3) An easement issued after January 16, 1987, may not be transferred or assigned without being approved and recorded on the prescribed forms issued by the department.

(4) Within 5 years of the granting of an easement by the board, the grantee must put the easement to the use which is allowed in the right-of-way deed. Failure to put the easement to such use shall be sufficient cause for forfeiture of the easement upon written notice by the department. (History: 77-1-209, MCA; IMP, 77-2-101, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.136 LICENSES (1) The department may issue licenses for any secondary use of state land other than its primary classification except for timber sale permits and agreements when such use is compatible with the department's multiple use objective. Any person desiring a license shall apply on a form prescribed by the department and shall provide a map showing the area intended for use. The department may require a professional survey for which the applicant shall pay and other information necessary to issue such license. A license may be subject
to competitive bidding when it is deemed to be in the best interests of the state.

(2) When issuing a license, the department may attach special stipulations for protection of state land resources, and require a bond to ensure compliance with all terms of the license.

(3) The cost of a license shall vary according to the use intended. A filing fee is required with application. (History: 77-1-209, MCA; IMP, 77-1-202 and 77-1-203, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.137 CABINSITES (1) A cabinsite lease may only include a maximum of 5 acres unless special circumstances exist for which the department may grant more than 5 acres to be included in the special lease.

(2) The department shall chain or measure in feet the area to be included in a cabinsite lease. Each corner of the cabin-site shall be identified by a method to be determined by the department. A plat shall be made that will include all measurements and identified corners. The plat will include the location, width and length of the access road and other information the department deems necessary.

(3) The lessee shall be required to comply with all rules and regulations involving county planning, subdivision requirements, and other state and federal statutes and regulations. The successful bidder for a new cabinsite lease shall pay for the cost of such survey and preparation of the plat, including county planning, subdivision requirements and other state and federal statutes and regulations.

(4) The issuance of any cabinsite leases after January 16, 1987, shall require reclassification of the land as provided by ARM 36.25.109.

(5) A lessee whose bid is accepted for a cabinsite lease shall purchase the fixtures and improvements from the former lessee. The parties shall determine the value of such fixtures and improvements by agreement. If the parties are unable to reach an agreement within 60 days of acceptance of the bid, then the parties shall enter into arbitration as set forth in ARM 36.25.125. Extensions of the 60-day time limit may be granted by the department upon written application of one of the parties which sets forth good cause why such extension should be granted.

(6) A cabinsite lease grants the lessee the right of access and the right to place necessary utility facilities within the cabinsite lease area. For any such rights outside of the cabinsite area, the lessee must acquire an easement. (History: 77-1-209, MCA; IMP, 77-1-208 and 77-1-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.138 LESSEE OR LICENSEE DAMAGE COMPENSATION REQUIREMENTS (1) When the board or department issues a lease or license on property upon which a lease or license of a different type already exists, the existing lessee or licensee shall be compensated by the more recent lessee or licensee for damages to the crops, improvements or leasehold interest of said existing lessee or licensee. Lessees or licensees may not receive compensation for such damages in excess of the value of actual damages to the crops, improvements or leasehold interest of said existing licensee. Only in exceptional cases documented to and approved by the department may the lessee or licensee receive damages for natural resources or crops in excess of the annual rate that the lessee or licensee is making to the department for rental payments. If a lessee or licensee collects or attempts to collect an amount in excess of said actual damages, such action may constitute sufficient grounds for cancellation of the lease or license. The department may adjust the A.U.M.'s allocated to a grazing lease or license when there is issued a lease or license for another purpose and that other purpose interferes with the grazing on the state lease. (History: 77-1-209, MCA; IMP, 77-1-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.139 CULTURAL RESOURCES INVENTORY (1) In the event a cultural resources inventory is necessary prior to the issuance of a lease, license, easement or other land use authorization the department may, in its discretion, require the applicant to provide the department with a copy of the inventory report. The department may require the applicant to bear the expense of the inventory and report. (History: 22-3-424 and 77-1-209, MCA; IMP, 22-3-424, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.140 RESOURCE DEVELOPMENT PROJECT REQUESTS (1) Any lessee of state land may request that the department consider a resource development project. In order to consider such project the department may require the lessee to furnish certain information including a description of the land involved and a description of the proposed project, including areas involved, potential return to the state, potential costs and other pertinent details. Projects will be undertaken only when, in the judgment of the department, the lessee has a record of good management of the land or shows evidence of improving the management of the land. The department will consider projects to promote such development of land as is in the best interests of the state, including, but not limited to, stock water developments, saline seep control, irrigation project site preparation and development of certain vegetative practices. The department shall examine each proposal to determine its feasibility and may request assistance in such examination from appropriate state and federal agencies. The lessee shall cooperate with the department in planning the project and in negotiating for a fair return on the development. (History: 77-1-603, MCA; IMP, 77-1-601 through 77-1-609, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.141 FEDERAL FARM PROGRAM COMPLIANCE (1) If a lessee or licensee has his lease or license canceled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payments or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license, he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a crop share, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose of receiving the state's share of the federal farm payments. (History: 77-1-209, MCA; IMP, 77-1-202 and 77-1-301, MCA; NEW, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384.)

Rule 36.25.142 reserved

36.25.143 OVERVIEW OF RECREATIONAL USE RULES (1) ARM 36.25.146 through 36.25.162 regulate the recreational use of state lands administered by the department of natural resources and conservation. These lands are commonly referred to as "trust lands" and appear in light blue on most land status maps.

(2) Recreational use is divided into two categories as follows:

(a) General recreational use - This use is generally defined as any type of non-concentrated, non-commercial outdoor recreational activity except disturbance of archeological, historical, or paleontological sites (which is prohibited by the Montana Antiquities Act and subjects the violator to criminal penalties), wood gathering, tree cutting, commercial rock or mineral collecting, and trapping. This is more specifically defined in ARM 36.25.145(11). It requires purchase of a recreational use license. Detailed procedures and restrictions are contained in ARM 36.25.146 through ARM 36.25.161.

(b) Special recreational use - This use is defined in ARM 36.25.145 and requires a special recreational use license. These kinds of uses include commercial or concentrated use as defined in 77-1-101(5), MCA. Detailed provisions are contained in ARM 36.25.162.

(3) The purpose of ARM 36.25.144 through ARM 36.25.162 is to provide reasonable recreational use of legally accessible state lands within the bona fide management constraints of state land lessees. These rules should be interpreted to accomplish this purpose. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-801 through 77-1-810, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1993 MAR p. 2536, Eff. 10/29/93; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.144 ADMINISTRATION OF RECREATION ON STATE LANDS ADMINISTERED BY THE DEPARTMENT

(1) Under Article X, section 4 of the Montana Constitution, the board of land commissioners has the duty and authority to manage state trust lands under regulations provided in law. Under 77-1-301, MCA, the department of natural resources and conservation manages state lands under the direction of the board. Section 77-1-203(3), MCA, opens state lands administered by the board to general recreational use subject to legal access and to closures and restrictions.

(2) Lands owned by the state that are not subject to ARM 36.25.143 through ARM 36.25.162 are:

(a) lands owned by the department of fish, wildlife and parks, including:

(i) those portions of game ranges and wildlife management areas that are owned by the department of fish, wildlife and parks;

(ii) state parks;

(iii) fishing access sites; and

(iv) lands leased by the department of fish, wildlife and parks to private individuals as cabinsites;

(b) lands subject to lease, license, or easement from the department to the department of fish, wildlife and parks or a city, county, or consolidated city-county government for the following purposes:

(i) public parks; and

(ii) fishing access sites;

(c) the surface, beds and banks of rivers, streams, and lakes that are open to the general public for recreational purposes under the stream access law;

(d) highways and highway rights-of-way, except that the prohibition against open fires in ARM 36.25.149(1)(d) applies where a highway crosses state lands administered by the department;

(e) lands administered by the department of corrections;

(f) campus grounds, experiment station grounds, and other lands owned by the university system;

(g) department of natural resources and conservation administrative sites;

(h) lands in which the department of natural resources and conservation does not own the surface, including lands where the department owns the mineral estate only and private lands over which the department has acquired an easement; and

(i) other lands owned by any other state agency.

(3) The main office of the department of natural resources and conservation is located in Helena. To administer its field functions, the department has divided the state into 6 geographic "areas," each administered by an "area land office," the head of which is the "area manager." Areas are further divided into units, each administered by a "unit office." A listing of those offices is:

| Area | Office Location |
|---|---|
| Central Area | |
| Central Land Office | Helena |
| Helena Unit Office | Helena |
| Bozeman Unit Office | Bozeman |
| Conrad Unit Office | Conrad |
| Dillon Unit Office | Dillon |
| Eastern Area | |
| Eastern Land Office | Miles City |
| Northeastern Area | |
| Northeastern Land Office | Lewistown |
| Glasgow Unit Office | Glasgow |
| Lewistown Unit Office | Lewistown |
| Northwestern Area | |
| Northwestern Land Office | Kalispell |
| Kalispell Unit Office | Kalispell |
| Libby Unit Office | Libby |
| Plains Unit Office | Plains |
| Stillwater Unit Office | Olney |
| Swan River Unit Office | Swan Lake |
| Southern Area | |
| Southern Land Office | Billings |
| Southwestern Area | |
| Southwestern Land Office | Missoula |
| Missoula Unit Office | Missoula |
| Hamilton Unit Office | Hamilton |
| Clearwater Unit Office | Greenough |
| Anaconda Unit Office | Anaconda |

(4) Whenever in ARM 36.25.143 through ARM 36.25.162, the submission of a document, such as a petition, is required to be filed at an area or unit office, the document must be submitted to the area or unit office listed above that administers the state land to which the document pertains. Persons may contact any department office to determine the appropriate office for any tract of land.

(5) Whenever in ARM 36.25.143 through ARM 36.25.162, a formal or informal hearing is required to be held in an "area," the term "area" refers to the department area in which the land to which the hearing pertains is located. The hearing may be held, at the department's discretion, at any location within that area. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-801 through 77-1-810, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384, Eff. 9/6/96.)

36.25.145 DEFINITIONS Wherever used in ARM 36.25.143 through ARM 36.25.162, unless a different meaning clearly appears from the context:

(1) "Affidavit" means a signed statement, the truth of which has been sworn to or affirmed before a notary public, as evidenced by the signature and seal of the notary public.

(2) "Board" means the board of land commissioners provided for in Article X, section 4 of the Montana Constitution.

(3) "Closure" means prohibition of all general recreational use.

(4) "Customary access point" means, with regard to state land, each outer gate and each normal point of access to the land, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(5) "Dedicated county road" means a county road that has been created by means of donation of a landowner and acceptance by a county under statutory or common law dedication procedures.

(6) "Dedicated public road" means a road useable by the public under state or federal law. The term includes dedicated county roads.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 32, MCA.

(8) "Director" means the director of natural resources and conservation, provided for in 2-15-3202, MCA. The director is the chief administrative officer of the department of natural resources and conservation.

(9) "Drop box" means a receptacle in which a person making general recreational use of state lands may leave notice required pursuant to ARM 36.25.155 or ARM 36.25.156.

(10) "Emergency" means, for the purposes of ARM 36.25.152, a situation that:

(a) creates an imminent threat to personal safety or of significant property damage or significant environmental harm; and

(b) would be substantially lessened or alleviated by closure to general recreational access of a state tract; and

(c) requires closure more expeditiously than could be implemented through the normal closure procedure.

(11) "General recreational use" means non-concentrated, non-commercial recreational activity, except:

(a) collection, disturbance, alteration, or removal of archeological, historical, or paleontological sites or specimens (e.g., fossils, dinosaur bones, arrowheads, old buildings, including siding) (which requires an antiquities permit pursuant to 22-3-432, MCA);

(b) mineral exploration, development, or mining (which requires a lease or license pursuant to Title 77, chapter 3, MCA);

(c) collection of valuable rocks or minerals (which requires a lease or license pursuant to Title 77, chapter 3, MCA);

(d) cutting or gathering of standing or downed trees (for which the department conducts sales pursuant to Title 77, chapter 5, MCA, and issues licenses pursuant to ARM 36.25.136); and

(e) trapping.

(12) "Growing crop" means a crop, as defined below, between the time of planting and harvest. "Crop" means such products harvest, including but not limited to cereals and vegetables and including grass and alfalfa that are intended for harvest for hay or seed production. The term does not include grass used for pasturage or trees.

(13) "Lease" means a lease or land use license, other than a recreational use or special recreational use license, issued by the department for use of the surface of the land. The term does not include a mineral lease unless it is preceded by the word "mineral."

(14) "Lessee" means a person who holds a lease as that term is defined in (13).

(15) "Legally accessible state lands" means state lands that can be accessed by dedicated public road, public right-of-way, or public easement; by public waters such as lakes, rivers, and streams that are recreationally navigable under 23-2-302, MCA; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the land has been secured from the landowner. Accessibility by aircraft does not render lands legally accessible under this definition. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

(16) "Livestock" means cattle, sheep, swine, goats, privately owned bison and elk, horses, llamas, mules, donkeys, and other animals used for the protection of these animals.

(17) "Motorized vehicle" means a vehicle propelled by motor power, including, but not limited to, an automobile, truck, motorcycle, moped, and an all terrain vehicle but excluding a snowmobile.

(18) "Recreational use account" means the account established by 77-1-808, MCA, in which revenues generated from general recreational use of state lands are deposited and from which expenses of the general recreational use program are paid.

(19) "Recreational use license" means the license issued pursuant to ARM 36.25.146 that authorizes a person to engage in general recreational use as defined in (11).

(20) "Recreational use advisory council" means the advisory council created pursuant to ARM 36.25.154.

(21) "Restriction" means a limitation on the manner in which recreational use may be conducted.

(22) "Special recreational use" means:

(a) commercial recreational activities, such as outfitting, in which a private person, corporation, group, or other entity charges a fee or obtains other consideration;

(b) non-commercial recreational activities conducted by an organization, such as a lodge, business, church, union, or club;

(c) overnight recreational use on leased or licensed lands by one or more persons outside a designated campground and more than 200 feet from a customary and legal access point or water body; and

(d) overnight horse use. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-101, 77-1-801 through 77-1-806, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1993 MAR p. 2536, Eff. 10/29/93; AMD, 1994 MAR p. 2539, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.146 GENERAL RECREATIONAL USE OF STATE LANDS: LICENSE REQUIREMENT (1) Subject to restrictions imposed pursuant to ARM 36.25.149 and ARM 36.25.153 and closures imposed pursuant to ARM 36.25.150, ARM 36.25.152, and ARM 36.25.153, state lands administered by the department, except those lands described in ARM 36.25.144, are open to general recreational use to a person under the age of 12 years or a person 12 years old or older who obtains a recreational use license, signs that license, and has a valid signed license in his or her possession. Under 77-1-801, MCA, general recreational use without a license is a misdemeanor.

(2) A general recreational use license is issued for a 12-month period beginning on March 1 of each year and expiring on the last day of February of the next year. The cost of a general recreational use license is $5 before March 1, 1996. After February 29, 1996, the cost of the license is $5 for persons 17 years of age or younger or 60 years of age or older. The cost of the license for persons who are older than 17 and younger than 60 is $10. Family members living within the same household may obtain recreational use licenses by paying a family fee of $20. The license is personal and non-transferable. It may be purchased at any authorized license agent of the department of fish, wildlife and parks. Any person may purchase a recreational use license for a spouse, parent, child, brother, or sister, but the license is not valid until signed by the person in whose name it is issued.

(3) A person who uses state lands for general recreational use shall abide by the restrictions imposed pursuant to ARM 36.25.149 and may not use for general recreational purposes state lands that have been closed pursuant to ARM 36.25.150, ARM 36.25.152, or ARM 36.25.153. Violation of this provision subjects the violator to civil penalties pursuant to ARM 36.25.157.

(4) No lessee or other person may interfere with a person who is making lawful general recreational use of state lands in accordance with this rule. Violation of this provision subjects the violator to civil penalties pursuant to ARM 36.25.157. The lessee may, without such interference, make inquiry concerning the status of those using state lands.

(5) Under 77-1-801(2) and (3), MCA, a person must, upon request of a fish and game warden, present for inspection his or her recreational use license. Failure to present the license is a misdemeanor.

(6) A person who is engaging in general recreational use on state land shall, upon request of a department employee, present his or her recreational use license for inspection. Failure to present the license subjects the recreationist to a civil penalty pursuant to ARM 36.25.157.

(7) A person who is engaging in general recreational use on private land that has been opened pursuant to an exchange under ARM 36.25.152 shall, upon request of a department employee or a fish and game warden, present his or her recreational use license for inspection. Failure to present the license subjects the recreationist to a civil penalty pursuant to ARM 36.25.157. (History: 77-1-106, 77-1-209, 77-1-802, and 77-1-804, MCA; IMP, 77-1-106, 77-1-801, 77-1-802, 77-1-804, and 77-6-210, MCA; NEW, 1992 MAR p. 568, Eff. 3/28/92; AMD, 1994 MAR p. 2539, Eff. 9/9/94; AMD, 1995 MAR p. 1047, Eff. 6/16/95; TRANS, 1996 MAR p. 2384.)

Rules 36.25.147 and 36.25.148 reserved

36.25.149 GENERAL RECREATIONAL USE OF STATE LANDS: RESTRICTIONS (1) The following restrictions apply to persons engaging in general recreational use of state lands except for general recreational use subject to block management restrictions pursuant to ARM 36.25.163:

(a)(i) Except as provided in (ii) and (iii), motorized vehicle use on state lands by recreationists is restricted to federal roads, state roads, dedicated county roads, other county roads that are regularly maintained by the county and those roads on state lands that are designated by the department as open for motor vehicle use.

(ii) A person who has in his or her possession a "permit to hunt from vehicle" issued by the department of fish, wildlife and parks is authorized to drive on any road except a road that is closed by the department by sign or barrier.

(iii) A recreationist may park on state land within 50 feet of a customary access point; on federal roads and highways, state highways, and county roads in accordance with applicable traffic laws and regulations; and within 50 feet of any other road designated by the department for public access across the state land. The recreationist may not park so as to block vehicle access to the tract. Parking of vehicles must be accomplished in a manner that does not produce injury to the land or the lessee's improvements.

(b) Snowmobile use on the roads referenced in (1)(a)(i) is allowed only if permitted by applicable traffic laws and regulations. Snowmobile use on leased land is restricted to those department roads that have been designated as open to motorized vehicle use. Snowmobile use on unleased land is allowed except in areas where it is prohibited by the department.

(c) A recreationist shall use firearms in a careful and prudent manner. A recreationist may not negligently, as defined in 45-2-101(37), MCA, discharge a firearm on state lands or discharge a firearm within 1/4 mile of an inhabited dwelling or of an outbuilding in close proximity to an inhabited dwelling without permission of an inhabitant. Temporary absences of inhabitants do not render a dwelling uninhabited.

(d) Open fires on leased or licensed land are restricted to campgrounds designated by the department for public camping. No fireworks may be discharged on state land.

(e) Overnight recreational use on leased or licensed land must take place within 200 feet of a legal and customary access point or water body that is navigable for recreational purposes under 23-2-302, MCA. The person may not drive or park a vehicle more than 50 feet from the access point. A recreationist's overnight use of state lands must not exceed the following time limits:

(i) for any site on leased or licensed land outside a designated campground - 2 consecutive days;

(ii) for a designated campground - 14 consecutive days;

(iii) for unleased, unlicensed lands outside a campground -14 days per calendar year, unless permission for a longer period is obtained from the department.

(f) A recreationist may not keep horses on state land overnight.

(g) A recreationist shall keep pets on a leash or otherwise in control. A recreationist may not allow the pet to harass livestock.

(h) A recreationist may not interfere with legitimate activities of the lessees or their agents conducted pursuant to the lease. For example, the discharge of firearms that would interfere with the authorized use of a tract for livestock operations is prohibited.

(i) For state lands included within a wildlife management or block management area administered by the department of fish, wildlife and parks, recreational use and activities must be conducted in accordance with rules, regulations, and procedures specific to that management area.

(j) Littering on state lands is prohibited. Recreation-ists shall pack out their litter.

(2) The department may, after notice to the lessee, impose additional site specific restrictions on general recreational use to protect public safety, property, or the environment. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; AMD, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.150 GENERAL RECREATIONAL USE OF STATE LANDS: CATEGORICAL CLOSURES (1) Except as provided in (2), the following state lands are closed to general recreational use by the public:

(a) all lands leased for cabinsites or homesites;

(b) all lands on which growing crops, as defined in ARM 36.25.145, are located;

(c) military leases while military activities are taking place;

(d) active commercial leases; and

(e) lands on which the department has proclaimed the threat of wildfire to be extreme pursuant to ARM 36.10.119 or for which the governor has made such a proclamation pursuant to ARM 36.10.120.

(2)(a) Any person, corporation, organization or agency of local, state, or federal government may petition to exclude a specific tract from a categorical closure imposed pursuant to (1).

(b) The petition must be submitted in writing to the area or unit office, must be signed by the petitioner, and must contain the following information:

(i) name, mailing address, and telephone number of petitioner;

(ii) description of lands to which the petition applies by legal description, lease number, or description of the location;

(iii) the reason that the categorical closure should be terminated for that tract and supporting documentation; and

(iv) duration of period for which termination is sought.

(c) The department may summarily dismiss a petition with a brief statement of the reasons for dismissal whenever:

(i) the petition is unsupported by specific substantial factual allegations, data, or documentation; or

(ii) a petition requesting substantially the same exclusion has been denied within the preceding 365 days.

(d) To be considered during a particular calendar year, the petition must be submitted by April 1 of that year. Upon receipt of a valid petition, the department shall notify the lessee that a petition has been filed and he or she may submit an objection or have an informal hearing, or both, on the petition at the area or unit office on or before May 1. The petitioner may also request an informal hearing.

(e) If an informal hearing is requested, the department shall notify the petitioner and the lessee of the informal hearing and they may attend and participate. The informal hearing must be conducted by the area manager or his designee.

(f) The area manager or designee may conduct further investigation and shall, on or before July 1, make a written decision whether to grant the petition. The written decision must contain the reason for granting or denying the petition. Copies of the decision must be mailed to the petitioner and the lessee.

(g) The lessee or petitioner may appeal the decision to the director or his designee by filing a written notice of appeal with the area office within 15 days of receipt of the decision. The area office shall immediately forward the appeal to the department's main office in Helena. The appeal shall, in the discretion of the director, proceed by written argument, oral argument, or both at the main office of the department in Helena or other location designated by the director. The opposing party is entitled to notice of the appeal and the opportunity to respond, including the right to appear at any appellate hearing. Neither party may submit evidence or information that was not submitted at the informal hearing. The director or his designee shall issue a written decision affirming, reversing, or modifying the decision on or before September 1.

(3) Except for closure for fire danger pursuant to (1)(e), the lessee shall post categorically closed lands at all customary access points with signs provided by the department or duplicated from signs provided by the department. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

Rule 36.25.151 reserved

36.25.152 GENERAL RECREATIONAL USE OF STATE LANDS: PROCEDURE FOR SITE SPECIFIC CLOSURES AFTER SEPTEMBER 1, 1992 (1) The department may close specific tracts of state land pursuant to this rule after September 1, 1992, for any of the following reasons:

(a) damage attributable to recreational use diminishes the income generating potential of the state lands;

(b) damage to surface improvements of lessee or mineral lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control;

(g) the presence of buildings, structures, or facilities;

(h) protection of public safety;

(i) prevention of significant environmental impact;

(j) disruption of calving, lambing, or shipping activities or substantial disruption of livestock use;

(k) an imminent threat, caused by potential substantial public use, of immediate, irreparable property damage or bodily injury on the state tract or adjacent land; or

(l) comparable public general recreational use has been made available pursuant to (13).

(2) Closures made pursuant to (1) may be of a seasonal, temporary, or permanent nature.

(3)(a) Any person, corporation, organization, or agency of local, state, or federal government may petition to close a specific tract of land for any reason listed in (1).

(b) The petition must be submitted to the area or unit office in which the state land is located and must be in writing. To be considered during a calendar year, the petition must be submitted by April 1 of that year, be signed by the petitioner, and must contain the following information:

(i) name, mailing address, and telephone number of petitioner;

(ii) description of lands to which the petition applies by legal description, lease number, or other description of the location;

(iii) the reason that the land should be closed and supporting documentation; and

(iv) period for which closure is sought.

(c) The department may summarily dismiss a petition with a brief statement of the reason for the dismissal if:

(i) the petition is not based on a reason for closure listed in (1);

(ii) the petition is not supported by specific factual allegations, data, or documentation; or

(iii) a petition requesting essentially the same closure has been rejected in the past 365 days unless changed conditions are alleged and documented.

(d) The department may also initiate a closure proceeding by preparing on or before April 1, a written statement containing the information described in (b)(ii), (iii), and (iv). The department shall follow the procedures contained in (4) through (9).

(4) The department shall by May 1 post public notice of the petition or statement at the county courthouse and the area and unit offices and by making a list of all petitions and statements filed statewide available at the department's main office in Helena.

(5) The public notice must give the public an opportunity to object to the petition or statement and the objector and the petitioner an opportunity to request, on or before May 20, a public hearing on the closure. The objection must be submitted to the office in the area or unit in which the land is located. The objection must contain the reasons why the petition should not be granted and supporting documentation. The objection may not be considered if it does not. If a hearing is requested, the department shall hold the hearing in the area of the proposed closure.

(6) Notice of hearing must be sent to the petitioner and the lessee. In addition, public notice must be given on or before June 5 in the same manner as provided in (4). The notice must contain the name of the petitioner, location of the land, reason for proposed closure and reasons that the hearing has been requested.

(7) The hearing must be held in the area of the proposed closure and be an open public hearing at which any interested party may give comments and submit information. The hearing must be held before June 20.

(8) The department may conduct further investigation and shall prepare a written decision to grant, grant with modifications, or deny the petition, stating its reasons for the decision. On or before July 1, it shall send a copy of the decision to the petitioner and any person who filed objections pursuant to (5).

(9) The objector or petitioner may appeal the decision to the director or his designee by filing a written appeal with the area office within 15 days of receipt of the decision. The department shall give the opposing party notice of the appeal and the opportunity to respond, including the right to appeal at any appellate hearing. The appeal shall, in the discretion of the director, proceed by written argument, oral argument, or both, at the main office of the department in Helena or other location designated by the director. No party may submit evidence or information that was not submitted at the hearing. The director shall convene the recreational use advisory council and request it to recommend a decision on the appeal. The director or his designee shall, after receiving the recommendation of the council, issue a written decision affirming, reversing, or modifying the decision. The director's decision must be made on or before September 1. If the advisory counsel does not make a recommendation on or before August 25, the director need not consider its recommendation in making his decision.

(10) If the petition is granted, the lessee shall post the closed lands at all customary access points with signs provided by the department or duplicated from signs provided by the department. For temporary closures, the lessee shall remove closure signs at the end of the closure period.

(11) In an emergency, as defined in ARM 36.25.145, any person or entity that is qualified to file a petition pursuant to (3)(a) may request an emergency closure by filing a written request with the area office or by making a telephone call and filing a written request within 24 hours. When possible, the area manager or his designee shall notify and consult with the lessee. The area manager or his designee shall grant or deny the petition as soon as possible, but in no case in more than 5 days. If the petition is granted, the closure must be for a specific period of time and may be extended for additional periods. The area manager or his designee shall terminate the closure as soon as the emergency ceases. Upon request of any person, the director or his designee shall review any emergency closure in effect for more than 5 days and shall approve, modify, or terminate the closure in writing.

(12) The department may also, on its own initiative, after consulting or attempting to consult with the lessee, close a tract of state

land in an emergency.

(13)(a) The department may, after notice pursuant to (5) and opportunity for hearing and appeal pursuant to (5), (7), or (9), enter into an agreement with a landowner whereby a tract of state land is closed under the procedures in (3) through (9) in exchange for the landowner's agreement to open private land to general recreational use if the private land:

(i) is in the same general area;

(ii) is of equal or greater recreational value to the state tract;

(iii) has equal or greater public access as the state tract; and

(iv) is not generally available for general recreational use upon request by the public.

(b) Before a state tract is closed pursuant to this rule, the private landowner shall enter into an agreement with the department whereby the landowner agrees to:

(i) allow general recreational use on the tract under restrictions no more stringent than those contained in ARM 26.25.149 and ARM 36.25.155;

(ii) post signs meeting design and content specifications of the department at customary access points on the state tract. These signs must notify the public of the closure and give directions to the private tract;

(iii) post signs on the private tract at customary access
points advising the public that the tract is open for general recreational use by the public subject to the recreational use license requirement;

(iv) mark or otherwise inform the recreationist of the boundaries of the area;

(v) allow employees of the department and department of fish, wildlife and parks access to the private property;

(vi) not claim funds pursuant to ARM 36.25.158 or ARM 36.25.159;

(vii) hold and save the department and the state of Montana harmless from all claims for property damage or personal injury resulting from the acts or omissions of the landowner; and

(viii) other requirements deemed necessary by the department.

(c) An agreement made pursuant to (b) must be cancelable by either party upon 60-day written notice.

(14) The department shall periodically review each closure made pursuant to this rule to determine whether the closure is still necessary. This review must occur at least at expiration or renewal of the lease for leased tracts and at least every 10 years for un-leased tracts. After public notice, notice to the lessee, and an opportunity for public comment and hearing, the department may terminate a closure it determines to no longer be necessary. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.153 MANAGEMENT CLOSURES AND RESTRICTIONS (1) Except as provided in (5), affected leased or licensed state land is closed to recreational use or subject to recreational use restrictions if the lessee complies with (2) and one of the following situations exists:

(a) Livestock is present or concentrated for purposes of calving, lambing, specialized or intensive breeding practices, or supplemental winter feeding.

(b) Livestock is concentrated for the purpose of weaning or shipping. If fewer than 200 animal units per section are concentrated, the closure or restriction may be imposed for no more than five days.

(c) Livestock is being gathered or moved.

(d) Weed control treatment is occurring or has recently occurred.

(e) The land is being irrigated; provided, however, that land may not be closed to foot traffic during a hunting season under this provision.

(f) The use would occur in close proximity to dwellings, structures, or facilities in use by the lessee; provided however, that ingress and egress to state land may not be prohibited under this provision.

(2) Closures and restrictions do not become effective until the lessee:

(a) notifies the appropriate area office that one of the situations described in (1) exists, and the area upon which it exists, the terms of the closure or restriction, and the duration of the closure or restriction. The closure or restriction is not effective until 24 hours after notice is given. Notice may be given in person, by mail, or by telephone;

(b) posts the state land near all customary and legal access points with signs that are provided by the department or duplicated from signs provided by the department. The sign must provide the lessee's name, address, telephone number, the closure or restriction imposed, the reason for the closure or restriction, the area to which it applies, and dates and the duration.

(3) Any person may object to a notice of management closure made pursuant to (1) on grounds that no basis for closure or restriction exists, that the area of closure or restriction in the notice is larger than necessary, or that the closure or restriction notice specifies a period that is longer than necessary. The objector shall notify the appropriate area office of the objection and the reason for it. The area manager or designee shall investigate the objection and within 2 working days of receipt of the objection shall determine whether the closure or restriction complies with this rule. An area manager may also conduct an investigation without receiving an objection. If he determines that the closure or restriction should be modified or terminated, he shall notify the lessee or his agent in writing. The lessee or agent shall immediately modify or terminate the closure or restriction to comply with the area office decision. Failure to comply with the area office directive subjects the violator to a civil penalty pursuant to ARM 36.25.157. If the investigation resulted from an objection, the area office shall also give written notice to the objector. The objector or the lessee may appeal the area office decision to the director by

filing a written appeal with the area office within 5 working days of receipt of the notice. The area office shall forward the appeal to the director. The director shall convene the recreational use advisory council and, upon receipt of a recommendation of the council issue a written determination of the issue. The director's decision is binding on the parties. If the director's decision is to terminate or modify the closure or restriction, the lessee shall immediately remove or modify the closure or restriction signs. Failure to comply with the director's decision subjects the violator to civil penalty pursuant to ARM 36.25.157.

(4) The department shall maintain, by county, a master list of management closures and restrictions. The list must include the tract description, name, address, and phone number of the lessee, and the reason and period of closure or restriction. The list shall be available to the public by inspection or telephone inquiry at the department's main office in Helena, or by mail upon payment of $1.00 plus 15¢ for each page over 5 pages.

(5) General recreational use conducted in conjunction with a special recreational use license applied for prior to July 1, 1994, is exempt from closures or restrictions imposed pursuant to this rule. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.154 RECREATIONAL USE ADVISORY COUNCIL (1) The board shall, pursuant to 2-15-122, MCA, appoint from a list of persons nominated by recreationist and lessee groups a recreational use advisory council consisting of 3 recreationists and 3 lessees. The members shall serve without compensation, but they are entitled to reimbursement for travel expenses pursuant to 2-15-122, MCA.

(2) The advisory council shall gather information and advise the director on the validity of management closure or restriction appeals made pursuant to ARM 36.25.153, on appeals of area manager decisions regarding site-specific closure petitions pursuant to ARM 36.25.152, and on whether to subject renewal of a block management agreement pursuant to ARM 36.25.167 to public review. In advising the director, the council shall attempt to provide reasonable recreational use of state lands within the bona fide management constraints of lessees.

(3) The following are general guidelines for the council's use in determining whether the term of a management closure or restriction is reasonable: for calving or lambing, 60 days; for breeding, 30 days; for gathering or moving, 1 day; for weed treatment, 5 days; and for concentration of 200 or more animal units per section for weaning and shipping, 30 days. The council may deviate from these guidelines as management circumstances dictate. (History: 77-1-804, MCA; IMP, 77-1-804 and 2-15-122, MCA; NEW, 1994 MAR p. 1844, Eff. 7/8/94; AMD, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.155 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF ALL USES OTHER THAN HORSE USE NOT FOR THE PURPOSE OF LICENSED HUNTING, DISCHARGE OF FIREARMS NOT FOR THE PURPOSE OF LICENSED HUNTING, AND OVERNIGHT USE (1) If a lessee wishes to be notified prior to anyone entering upon the leasehold for general recreational use other than discharge of firearms for any purpose other than licensed hunting, horse use for any purpose other than licensed hunting, or overnight use, the lessee shall post, at all customary access points, signs that are provided by the department or that are duplicated from signs provided by the department. The lessee must include on the sign the following information:

(a) name of the lessee or lessee's agent who must be notified;

(b) telephone number of the lessee or lessee's agent;

(c) clear directions to the location at which the lessee or the lessee's agent may be contacted; and

(d) clear directions to the location of the closest drop box. If the lessee does not wish to be notified in person or by telephone, the sign must so indicate and need not contain the information required in (b) and (c). The information must be legible and legibility must be maintained.

(2) A lessee who posts land pursuant to (1) shall provide a clearly identified drop box for each single tract at a customary access point to the tract, except that a lessee of 2 or more contiguous tracts may provide 1 drop box for those tracts to which the access point provides convenient access. In cases in which a customary access point cannot be easily identified or a question of the convenience of an access point is raised by the public, the area manager shall make a determination and the lessee shall install drop boxes in accordance with that determination.

(3) If the lessee or agent wishes to be notified in person or by telephone, the lessee or his or her agent shall be available to receive notice from recreational users by telephone or in person from the hours of 7:00 a.m. until 9:00 p.m. A person wishing to make general recreational use of state lands posted pursuant to (1) shall contact the lessee or lessee's agent in person or by telephone during those hours if the recreationist's access point to the state land is 5 miles or less by the shortest road from the nearest public telephone or the location at which the lessee or lessee's agent is available unless the lessee or lessee's agent is not available. The recreationist may determine which method of contact to employ. If the recreationist contacts the lessee or agent in person or by telephone, the recreationist shall, upon request, provide his or her name, address, and recreational use license number, the name and recreational use license numbers of all recreationists in his or her party, and the dates of use. Notice is considered to have occurred if the recreationist is answered by a telephone answering machine and the recreationist leaves his or her name, address, and recreation use license number and the same information for each member of his or her party. Notice authorizes the recreationist to engage in general recreational use for 3 consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. If the recreationist attempts to contact the lessee by telephone or in person but the lessee or agent is not available, or if the shortest road distance from the recreationist's access point to the nearest public telephone or the location at which the

lessee or lessee's agent is available is greater than 5 miles, the recreationist shall leave a notice in the drop box provided pursuant to (2). Notice by drop box is effective for 3 consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical.

(4) If the lessee wishes to be notified by drop box only, the recreationist shall leave notice in the drop box provided pursuant to (2). The notice must provide the recreationist's name, address, and recreational use license number and the names, addresses, and recreational use license numbers of each person in his or her party, and the dates of use. The recreationist is responsible for providing paper and pencil or pen to prepare the notice. Notice by drop box is effective for 3 consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical, such as a back country hunting or fishing trip.

(5) The department shall, after notice and opportunity for informal hearing at the main office of the department in Helena, revoke the general recreational use license of any person who violates (3) or (4). In addition, the department may prohibit the person from obtaining a recreational use license for a period not exceeding 2 years from the effective date of the revoked license. (History: 77-1-209, 77-1-804, and 77-1-806, MCA; IMP, 77-1-804 and 77-1-806, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.156 GENERAL RECREATIONAL USE OF STATE LANDS: NOTICE TO LESSEES OF OVERNIGHT USE, HORSEBACK USE FOR ANY PURPOSE OTHER THAN LICENSED HUNTING, AND FOR DISCHARGE OF A FIREARM FOR ANY PURPOSE OTHER THAN LICENSED HUNTING (1) If a lessee wishes to be notified prior to a recreationist entering upon the leasehold for overnight use not in conjunction with floating, horseback use for any purpose other than licensed hunting, or for discharge of a firearm for any purpose other than licensed hunting, the lessee shall post, at all customary access points, signs that are provided by the department or duplicated from signs provided by the department. The lessee must include on the sign the following information:

(a) the name of the lessee or lessee's agent who must be notified;

(b) the telephone number of the person designated pursuant to (a); and

(c) clear directions to the residence of the person designated pursuant to (a).

(2) If a lessee wishes to be notified prior to a recreationist entering upon the leasehold for overnight use in conjunction with floating of a river or stream, the lessee shall post, at the customary access points, signs that are provided by the department or that are duplicated from signs provided by the department. The lessee must include on the signs the following information:

(a) the name, address, and telephone number of the lessee or lessee's agent;

(b) clear directions to the residence of the person designated pursuant to (a), if the residence is within 500 yards of the customary access point; and

(c) directions to the location of the nearest drop box.

(3) A lessee who posts land pursuant to (1) or (2) shall provide a clearly identified drop box:

(a) for posting pursuant to (1), at the residence of the person designated for notice pursuant to (1)(a); or

(b) for posting pursuant to (2):

(i) at the residence of the person designated for notice pursuant to (2)(a), if the residence is within 500 yards of the customary access point; or

(ii) if the residence is not within 500 yards of the customary access point, at the point that is closest to the access point and reasonably accessible to floaters. A lessee of 2 or more contiguous state tracts along a stream may, if the lessee wishes, provide drop boxes for those tracts at the outer upstream and downstream boundaries only.

(4) If the person designated pursuant to (1)(a) wishes to be notified in person or by telephone, that person shall be available to receive notice by telephone or in person from the hours of 7:00 a.m. until 9:00 p.m. A person wishing to engage in overnight use not in conjunction with floating, horseback use for any purpose other than licensed hunting or discharge of a firearm for any purpose other than licensed hunting shall contact the person designated for notice pursuant to (1)(a) during those hours, unless the person is not available. A floater wishing to engage in overnight use shall contact a person designated for notice pursuant to (2)(a) between 7:00 a.m. and 9:00 p.m. unless the person is not available. The recreationist may determine which method of contact to employ. If the recreationist contacts the person in person or by telephone, the recreationist shall, upon request provide his or her name, address, recreational use license number, and the name and recreational use license number of each person in his or her party. Notice authorizes the recreationist to engage in firearm or horse use for 3 consecutive days, or any longer period specified by the lessee, without further notice. In addition, no further notice is required as long as the recreationist is engaged in continuous general recreational use that includes the state land and that makes further notice impossible or extremely impractical, such as a back country hunting or fishing trip. Notice authorizes overnight use for 2 consecutive days only.

(5) If the recreationist attempts to contact the person designated for notice by telephone or in person but that person is not available, or if the recreationist is a floater who wishes to engage in overnight use and no person has been designated for personal or telephone notice pursuant to (2)(a), the recreationist shall leave notice in the drop box provided pursuant to (3). The notice must provide the recreationist's name, address, and recreational use license number, and the same information for each person in the party, and the dates of use. Notice by drop box is effective for firearm or horse use for 3 consecutive days or until the end of any continuous general recreational use that includes the state land and that makes additional notice impossible or extremely impractical. Notice by drop box is effective for overnight use for 2 consecutive days.

(6) The department shall, after notice and opportunity for informal hearing at the main office of the department in Helena, revoke the general recreational use license of any person who violates (4) or (5). In addition, the department may prohibit the person from obtaining a recreational use license for a period not exceeding 2 years from the effective date of the revoked license. (History: 77-1-804, 77-1-806, MCA; IMP, 77-1-804 and 77-1-806, MCA; NEW, 1994 MAR p. 2539, Eff. 7/8/94; TRANS, 1996 MAR p. 2384.)

36.25.157 GENERAL RECREATIONAL USE OF STATE LANDS: CIVIL PENALTIES (1) Pursuant to 77-1-804(8), MCA, the department may assess against a recreationist, lessee, or other person a civil penalty of up to $1,000 for each day of violation of ARM 36.25.146, 36.25.149, 36.25.150, 36.25.152, 36.25.153, or 36.25.163. The department may waive the civil penalty for minor or technical violations and shall waive the civil penalty if a criminal penalty has been assessed for the violation.

(2) In determining the amount of civil penalty, the department shall consider the following factors:

(a) number of previous violations;

(b) severity of the infraction; and

(c) whether the violation was intentional or unintentional.

(3) A person against whom the department proposes to assess a civil penalty is entitled to a contested case hearing in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, on the questions of whether a violation was committed and the amount of the penalty. The hearing must be conducted by a hearing officer appointed by the director. The department shall notify the individual of the violation, setting forth in the notice the specific facts which the department alleges to constitute the violation. The notice shall be served by certified mail or in person by a department employee, sheriff or deputy, fish and game warden, or registered process server. The notice must give the person at least 15 days to respond to the violation notice. Upon receipt of the response or expiration of the period allotted for response, the department shall either withdraw the notice of violation or provide its rationale for pursuing the violation and a proposed penalty. Service of the response and proposed penalty must be made in the same manner as the notice of violation. The person is entitled to a hearing on the existence of the violation, the amount of proposed penalty, or both, if he or she requests a hearing within 30 days of receipt of the department's response and proposed penalty. The request for hearing must set forth a statement of the reasons that the person is contesting assessment of the penalty.

(4) Upon conclusion of the hearing, the department shall, within 60 days, issue its findings of fact and conclusions of law and order dismissing the violation or assessing a penalty. If a civil penalty is assessed, the person shall pay the penalty within 30 days of receipt of the order or such additional time as is granted by the department.

(5) The assessment of the civil penalty is appealable to district court pursuant to Title 2, chapter 4, part 7, MCA. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; AMD, 1994 MAR p. 1844, Eff. 7/8/94; AMD, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.158 GENERAL RECREATIONAL USE OF STATE LANDS: DAMAGE REIMBURSEMENT (1) As provided in 77-1-809, MCA, a lessee or a mineral lessee may apply to the department for reimbursement of costs resulting from repair to or replacement of the lessee's improvements, growing crops, or livestock on state lands damaged by recreationists.

(2) The application must be submitted to the area or unit office within 30 days of the time that the lessee discovers the damage, must be in affidavit form, and must contain:

(a) the date of discovery of the damage;

(b) the nature of the damage;

(c) reasonable proof that the loss was caused by a recreationist;

(d) documentation of repair or replacement costs; and

(e) whether the claimant has submitted a claim to his private insurance carrier and, if so, the status of the claim.

(3) No reimbursement may be paid to the extent the less-ee's costs have been reimbursed by the lessee's insurance carrier.

(4) Upon review of the application and, if necessary, additional investigation, the department shall grant the claim in whole or in part or deny the claim. The department shall issue its decision within 60 days of receipt of the application.

(5) Whenever the lessee has submitted an insurance claim, the department shall delay payment of the claim until the action on the claim is completed.

(6) The department shall, on or before July 1 of each fiscal year, designate a portion of the recreational use account for damage reimbursement. Claims that are granted may be paid only to the extent that funds are available for damage reimbursement in the recreational use account and must be paid in the order they have been filed with the department. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-809, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

36.25.159 GENERAL RECREATIONAL USE OF STATE LANDS: WEED CONTROL MANAGEMENT (1) The lessee is responsible for weed control on leased state land. However, weed control cost share funds designated pursuant to (2) are available to lessees from the recreational use account for control of noxious weed infestations caused by general recreational use after February 29, 1992. "Noxious weeds" are those weeds designated as noxious weeds by the Montana department of agriculture.

(2) The department shall, on or before July 1 of each fiscal year, designate a portion of the general recreational use account for weed control.

(3) A lessee may apply in writing for weed control funds, equipment, assistance or supplies to treat a weed infestation caused by

general recreational use. The application must:

(a) describe the location and size of the infestation and type of weed;

(b) demonstrate that the infestation was caused by general recreational use of the tract; and

(c) contain a weed management plan, including the cost of carrying out the plan. The plan may propose any combination of recognized weed management techniques which will deal effectively with the weed problem.

(4) The area land office shall process applications in the order received and shall approve an application if it finds that the application reasonably proves that the infestation was caused by general recreational use of state lands, that the plan provides an effective method of control, and that cost of the plan is reasonable. In its approval, the area office shall designate the amount of funding approved. That amount may be less than the amount applied for. Before providing funding, supplies, assistance, or materials, the department shall enter into a written agreement with the lessee specifying how the funding, supplies, assistance, or materials must be used. The assistance may be provided through the county weed board.

(5) Projects remain eligible for funding for the fiscal year in which the approval was granted and for 2 additional fiscal years. At the end of this period, the department may terminate the approval if it determines that the project no longer meets the criteria in (4). (History: 77-1-209 and 77-1-810, MCA; IMP, 77-1-810, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

Rule 36.25.160 reserved

36.25.161 GENERAL RECREATIONAL USE OF STATE LANDS: OTHER PROVISIONS (1) Nothing in ARM 36.25.143 through 36.25.162 authorizes a recreationist to enter private land to reach state lands or to enter private land from state lands. A recreationist may not enter private land from adjacent state lands, regardless of the absence of fencing or failure of the owner to provide notice, without permission of the landowner or his agent.

(2) Under 77-1-806(2), MCA, entry onto private land from state land by a recreationist without permission of the landowner is a misdemeanor, whether or not the recreationist knows he or she is on private land.

(3) Recreationists are responsible for determining whether state lands are legally accessible. The recreationist is encouraged to contact landowners to determine boundaries and to use accurate maps.

(4) Before the department designates roads on state lands as open for public access pursuant to ARM 36.25.149, it shall mail notice of the proposed designation to the lessee.

(5) Any person may petition the board to include within the definition of general recreational use any type of recreation other than hunting and fishing. The petition must be in writing, be signed, and include a statement of the reasons why the use petitioned for should be included subject to the general recreational use license. It must be filed with the director, who shall bring the petition before the board. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804 and 77-1-806, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

36.25.162 SPECIAL RECREATIONAL USE OF STATE LANDS (1) No special recreational use of state lands may occur without first obtaining a special recreational use license from the department. This requirement applies whether or not any or all of the persons involved in the special recreational use have obtained general recreational use licenses pursuant to ARM 36.25.146.

(2) To obtain a special recreational use license, a person must be at least 18 years of age or the head of a family and apply to the area or unit office on a form prescribed by the department. The applicant shall provide a description of or a map showing the area intended for use.

(3) Before granting a special recreational use license, the department shall make a bona fide attempt to notify the lessee of the application.

(4) To obtain a special recreational use license, a person must pay to the department the amount that the department determines to be the full market value of that use. A license granted pursuant to this rule may be subject to competitive bidding.

(5) A license granted pursuant to this rule may be exclusive, except the department shall reserve the right to grant other licenses for different uses on the same land. Issuance of an exclusive license does not prohibit general recreational use of state lands that have not been closed pursuant to ARM 36.25.150 or ARM 36.25.152.

(6) A license issued pursuant to this rule shall include provisions regulating motor vehicle use and requiring that only certified weed seed free hay be brought onto the state land. The license may include other restrictions on the activity.

(7) The holder of a special recreational use license shall comply with all provisions of that license.

(8) Pursuant to 77-1-804(8), MCA, the department may assess a civil penalty of up to $1,000 for each day of violation of this rule. The department may waive the civil penalty for minor or technical violations. The penalty assessment standards and procedures contained in ARM 36.25.157 are applicable to civil penalty proceedings under this rule. (History: 77-1-209 and 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1992 MAR p. 568, Eff. 3/27/92; TRANS, 1996 MAR p. 2384.)

36.25.163 BLOCK MANAGEMENT AREAS: GENERAL RULES FOR INCLUSION OF STATE LAND (1) State lands may be enrolled in block management areas established by the department of fish, wildlife and parks under the procedures contained in ARM 36.25.164. For general recreational use on land so enrolled, a recreational use license is required and motorized vehicle use by a recreationist is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to

motorized vehicle use. A recreationist shall obey all restrictions imposed pursuant to the block management agreement. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.164 BLOCK MANAGEMENT AREAS: PROCEDURES FOR INCLUSION OF STATE LAND (1) The department shall commence review of a proposal to include state land within a block management agreement when the department receives from the department of fish, wildlife and parks a proposal that includes:

(a) a complete legal description of the state land affected by the proposal, with a description of the legal access status of each tract of land;

(b) a listing of all terms, conditions, and restrictions of the proposal; and

(c) a map that clearly identifies the boundaries of the proposed block management area, locations of state lands, adjoining public land, and public roads.

(2) The provisions of (3) apply to the review of a block management agreement that:

(a) would impose restrictions on recreational use that are more stringent than those contained in ARM 36.25.149; and

(b) contain state land that is:

(i) contiguous at some point to land that is not within the proposed block management area;

(ii) accessible by dedicated public road, public right-of-way, or easement;

(iii) accessible by public waters; or

(iv) accessible from contiguous federal, state, county, or municipal land that is open for public use.

(3) Before land that meets the criteria in (2) may be included in a block management agreement, the department of fish, wildlife and parks and the department must have:

(a) given public notice of the proposal in a newspaper of general circulation in the area of the proposed block management area;

(b) provided a 21-day period for written public comment following the public notice; and

(c) if, during the public comment period, a request for public hearing was received that in the department's opinion raises a significant question as to whether the proposal is in the best interests of the public or the trust, held a public hearing in the area.

(4) After close of the public comment period, the department shall review and prepare written responses to all substantive comments. The department shall send copies of those responses to each person who submitted a substantive comment.

(5) No public review is required for proposals that do not meet the criteria contained in (2).

(6) The department shall notify the department of fish, wildlife and parks whether it will enter into the agreement. No block management agreement is effective as to state land until it is executed by the department. The department may not enter an agreement that does not meet the criteria contained in ARM 36.25.165. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.165 BLOCK MANAGEMENT AREAS: CRITERIA FOR INCLUSION OF STATE LAND (1) The department may include state land in a block management area only if it finds that:

(a) inclusion is in the best interests of the public and the trust;

(b) the block management agreement does not conflict with rights of holders of leases, licenses, and easements;

(c) inclusion would not result in damage to the land;

(d) the block management area contains private land; and

(e) the state land is contiguous to federal or private land that is within the block management area. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.166 BLOCK MANAGEMENT AREAS: TERMS OF AGREEMENT (1) A block management agreement that includes state lands must contain the following provisions:

(a) Motorized vehicle use on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(b) If the state land meets the criteria of ARM 36.25.164, or if the agreement includes hunter limits, requires permission, or contains other restrictions that are more stringent than the restrictions contained in ARM 36.25.149, the department of fish, wildlife and parks shall post the state land at customary access points with signs that include the period that the block management restrictions are effective and describe how access may be obtained.

(c) If a complaint is not resolved to the satisfaction of the department, the department may withdraw the state land from the block management area. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384.)

36.25.167 BLOCK MANAGEMENT AREAS: RENEWAL OF AGREEMENT (1) A block management agreement that contains state lands may be renewed.

(2) Subject to (b), renewal of a block management agreement that meets the criteria of ARM 36.25.164 may be subject to the review procedures contained in ARM 36.25.164 only if:

(a) during the term of the agreement, the department or department of fish, wildlife and parks have received public comments or complaints tending to:

(i) raise significant concerns regarding compliance with the agreement;

(ii) indicate that continued enrollment in the block management program may not be in the best interests of the public or the trust; or

(iii) there will be changes in the agreement that impose more stringent restrictions than those contained in the existing agreement.

(b) If the department or department of fish, wildlife and parks has received complaints under the department of fish, wildlife and parks' complaint resolution system regarding a block management area that is being considered for renewal and those complaints have not been resolved, the director may not renew the agreement without public review until receiving a recommendation from the recreational use advisory council as to whether public review is appropriate.

(3) The renewal of a block management agreement that does not contain state land meeting the criteria in ARM 36.25.164 or does not meet the criteria of (2) above is not subject to public review under ARM 36.25.164.

(4) A block management agreement that was in effect on September 20, 1993, and was terminated in protest of the board's decision to expand the definition of "general recreational use" to include hiking and bird-watching may be renewed prior to October 1, 1994, under this rule.

(5) The department may renew a block management agreement that includes state land only if it meets the criteria for approval contained in ARM 36.25.165 and contains the provisions of ARM 36.25.166. (History: 77-1-804, MCA; IMP, 77-1-804, MCA; NEW, 1994 MAR p. 2002, Eff. 7/22/94; TRANS, 1996 MAR p. 2384; AMD, 1997 MAR p. 315, Eff. 2/11/97.)

36.25.801 DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

(1) "Annual rate of return" means the annual return divided by the asset value multiplied by 100%.

(2) "Annual return" means the net annual income.

(3) "Asset value" means the value of an asset as determined by appraisal or purchase price.

(4) "Bid" means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person eligible to participate in an auction, as specified by the department in accordance with 77-2-363, MCA.

(5) "Bid bond" means bid deposit, as defined in (6).

(6) "Bid deposit" means a certified check or cashier's check drawn on any Montana bank equal to 50% of the minimum sales price submitted in connection with a bid as an assurance of the performance of a contractual or promissory requirement.

(7) "Board" means the state board of land commissioners.

(8) "Current annual rate of return" means the average annual return for three years divided by the purchase price and multiplied by 100%.

(9) "Department" means the department of natural resources and conservation.

(10) "Earnest money" means a sum of money paid by a prospective purchaser as proof of that person's intention to complete the purchase transaction.

(11) "Lessee" means the current lease holder of any agricultural, grazing, commercial, cabin or home site, or other surface lease of state trust land.

(12) "Net annual income" means total revenues from all sources less total average expenses from all sources based on all available cost information, including information in the "Report on the Return on Asset Value by Trust and Land Office for State Trust Land."

(13) "Parcel" means one section or less that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department’s records.

(14) "Report on the Return on Asset Value by Trust and Land Office for State Trust Land" means the annual report produced to analyze the rates of return originating on trust land on land classified as forest, agricultural and grazing, and other.

(15) "Tract of record" means a distinct portion of land, irrespective of ownership, that can be identified by legal description, independent of any other portion of land, using documents on file in the records of the county clerk and recorder's office.

(16) "20-year average annual rate of return" means the sum of the annual rates for return for the most recent 20 consecutive years divided by 20. (History: 77-1-204, 77-2-308, 77-2-328, and 77-2-362, MCA; IMP, 77-2-328 and 77-2-362, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.802 LAND BANKING TRANSACTION COSTS (1) Except as provided in 77-2-362(2)(c), MCA, the department may use up to 10% of the proceeds deposited in the land bank fund to pay costs of transactions, as provided in 77-2-362(2)(b), MCA.

(2) The department may not be compensated for transaction costs of services performed by department staff.

(3) The department shall:

(a) maintain a record of each transaction;

(b) summarize transaction costs at the completion of each sale or acquisition; and

(c) include an accounting of transaction costs in the report required by 77-2-366(2), MCA. (History: 77-2-362, MCA; IMP, 77-2-362, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.803 CONSIDERATIONS IN THE SALE OF STATE TRUST LAND PURSUANT TO LAND BANKING (1) The

board may only sell a parcel that is wholly surrounded by other public land if the board provides compelling reasons for the sale.

(2) The board may only sell a parcel that is wholly surrounded by land under conservation easement if the board provides compelling reasons for the sale.

(3) The board may only sell a parcel that the department, in compliance with the Montana Environmental Policy Act, 75-1-201, et seq., MCA, (MEPA), determines significant for threatened or endangered species if the board provides compelling reasons for sale.

(4) If the sale of a parcel would extinguish existing, reasonable public access to other public or state trust land or to public water, as defined in 77-2-303(2)(a), MCA, the board shall reserve an easement or right of way for access to the other public or state trust land or to public water.

(5) If the sale of a parcel would extinguish access to adjacent private land, the department shall provide an opportunity for the landowner to make application to purchase an easement under 77-1-107, 77-1-130, or 77-2-101, MCA.

(6) If a person directly or indirectly creates an isolated parcel of school trust land in order to benefit from land banking, the department shall recommend that the parcel be considered nonisolated. (History: 77-2-362, MCA; IMP, 77-2-308 and 77-2-363, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.804 PRELIMINARY REVIEW OF PARCELS BEFORE NOMINATION (1) The department shall conduct a preliminary review of each parcel prior to nomination to determine whether further review is warranted. The department may consider the following factors in the preliminary review:

(a) the parcel produces low income, as calculated by:

(i) high market value and low return on the asset;

(ii) high administrative costs relative to other similar parcels; or

(iii) low potential to increase productive capacity of the land;

(b) whether the parcel is isolated. On a nonisolated parcel, the department shall describe the existing level of access;

(c) the parcel's impact on the diversity of the overall asset portfolio and within its land classification;

(d) the extent of infrastructure, such as roads, utilities, power, telephone, water, or sewer availability;

(e) the estimated net annual income from the parcel, based on information in the "Report on the Return on Asset Value by Trust and Land Office for State Trust Land";

(f) the potential for appreciation or depreciation in the value of the parcel, based on the best available information from the local real estate market;

(g) the parcel's potential for development or value-added activities that complement local and statewide economic development;

(h) whether and to what degree the sale of the parcel would affect access to other public lands; and

(i) whether the parcel is adjacent to other public land or private land under conservation easement, as documented by current information in the Montana natural heritage program database or similar source.

(2) Based on the preliminary review, the department will recommend to the nominator whether the parcel qualifies for nomination. (History: 77-1-204, 77-2-308, and 77-2-362, MCA; IMP, 77-2-328 and 77-2-363, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.805 PROCEDURES FOR NOMINATING AND EVALUATING STATE TRUST LANDS FOR SALE PURSUANT TO LAND BANKING (1) The board shall sell state trust land on a parcel-by-parcel basis.

(2) The board reserves the right to approve or deny nominations for sale of state trust land. The department reserves the right to prioritize activities related to the sale of state trust land.

(3) The board, the department, or the current lessee may nominate a parcel or parcels of state trust land for sale.

(a) Nominations must be on a form issued by the department and must be sent to the appropriate department office, as noted on the form.

(b) A lessee may nominate one or more parcels currently held by that lessee under a state of Montana surface lease agreement. The nominating lessee shall pay a nonrefundable $100 processing fee for each parcel of land nominated.

(c) The department may not accept incomplete nominations.

(d) The department shall review the classification of the parcel, as provided in 77-1-401, MCA, and classify the parcel if not classified.

(e) When a parcel is nominated, the department shall notify all persons holding a license on the parcel, the representative of the trust beneficiary, and the lessee of the parcel if board or department nominated. Notice to the trust beneficiary must go to the representative identified for each trust affected by the proposed sale.

(4) If the department determines that a parcel meets the preliminary suitability requirements for sale, the department shall conduct an environmental review of the parcel under MEPA. If the MEPA analysis determines that the sale would result in a significant adverse impact on natural resources, the parcel is generally not suitable for sale unless the board determines otherwise. If the department conducts a checklist environmental assessment under MEPA, the department shall briefly explain in writing each conclusion of "no impact."

(5) After evaluation of the preliminary review and the MEPA analysis, the department shall determine whether a parcel is suitable for sale and report to the board on the parcel's suitability for sale.

(a) If the department determines the parcel is not suitable for sale, the department may remove the parcel from nomination and eliminate the parcel from further review without board approval.

(b) The department shall post the report required by (4), including the MEPA analysis, in a dated notice on the department web site or other equivalent electronic medium. The notice must be posted at least 15 days before the next meeting of the board.

(c) The department shall notify the lessee of the department's recommendation by certified mail, as provided in 77-2-363(3), MCA. As a courtesy, the department shall try to contact the lessee by telephone about the determination. The notification must be mailed on or before the day the department posts the notice on its web site or other equivalent electronic medium.

(d) The department shall notify all persons holding a license on the parcel and the trust beneficiary about the determination.

(e) Any person may appeal to the board the department's removal of a parcel from nomination within 15 days of the department posting the report on the web site or other equivalent electronic medium. The board shall place the appeal on the next available agenda of a regularly scheduled board meeting no later than 15 days before the meeting.

(f) On a board- or department-nominated parcel, the lessee may, within 60 days of the determination, notify the department that the lessee intends to propose a land exchange.

(6) For each parcel, the department shall conduct a title review, if necessary.

(7) Upon the department's report to the board under (4), the board shall approve or reject the proposed sale.

(a) If the board rejects the proposed sale of the parcel, the department shall remove the parcel from nomination.

(b) If the board approves the proposed sale of the parcel, the department shall post the parcel on the department web site or other equivalent electronic medium within 30 days of the board's approval.

(8) If the board has approved a proposed sale, the department shall commission an appraisal from a list of licensed, department-approved appraisers.

(a) The department shall conduct or contract for the appraisal, to be reimbursed by the appropriate party under ARM 36.25.807(2)(b) or 36.25.808(8)(a).

(b) The appraisal must:

(i) include state-owned improvements in the valuation;

(ii) exclude lessee-owned or licensee-owned improvements from the valuation;

(iii) use comparable sales for like properties; and

(iv) include details of a discount in appraised value due to lack of access.

(c) The department shall post the appraised value of the parcel in a dated notice on the department web site or other equivalent electronic medium.

(9) Any person may commission, at that person's own expense, another appraisal from a list of department approved appraisers.

(a) A person commissioning another appraisal shall notify the department within 15 days of the posting of the appraised value.

(b) Any subsequent appraisal must be completed within 60 days of notification to the department of the intent to commission the appraisal.

(c) Any subsequent appraisal must include all elements required of the first appraisal.

(10) The department shall present to the board the first appraisal and any subsequent appraisals that are provided to the department.

(11) Upon receiving the appraisal or appraisals and survey, the board shall set a minimum bid on the parcel. The department shall add the minimum bid to the parcel's listing on the department web site or other equivalent electronic medium.

(12) If the board has approved a proposed sale, the department shall make the contents and findings of any title review and any environmental due-diligence review available to the public, all bidders, and the lessee.

(13) The department shall provide notice of the proposed sale to the following persons:

(a) the department of fish, wildlife and parks;

(b) the department of transportation;

(c) the department of environmental quality;

(d) all adjacent landowners of record;

(e) the appropriate trust beneficiaries;

(f) the board of county commissioners in the county where the parcel is located;

(g) any surface lessees by certified mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the parcel; and

(h) any surface lessees by certified mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the parcel.

(14) If necessary, the department shall conduct a survey of the parcel or parcels proposed for sale. The department shall pay for the survey, to be reimbursed by the appropriate party under ARM 36.25.807(2)(c) or 36.25.808(7)(d). (History: 77-1-204, 77-2-308, and 77-2-362, MCA; IMP, 77-2-328, 77-2-362, 77-2-363, and 77-2-366, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.806 REQUIREMENTS FOR LAND BANKING EARNEST MONEY DEPOSIT (1) The lessee who nominated the parcel shall submit earnest money in the sum of $1,000 within 30 days of receiving notice from the department that the parcel is available for sale.

(2) If the lessee does not submit earnest money within 30 days of notice of availability for sale, the department shall remove the parcel from nomination unless co-nominated by the board or the department.

(3) Board- and department-nominated parcels do not require $1,000 earnest money. (History: 77-1-204, 77-2-308, and 77-2-362, MCA; IMP, 77-2-328 and 77-2-363, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.807 TERMINATION OF LESSEE-INITIATED LAND BANKING SALE AFTER EARNEST MONEY DEPOSIT PAID

BY LESSEE (1) If the current lessee of the land to be sold has initiated the sale, as authorized by 77-2-361 through 77-2-367, MCA, and deposited earnest money with the department, the lessee may cancel the sale. The lessee shall send written notice by certified mail to the department, postmarked no later than 30 days before the date of the auction.

(2) If the lessee cancels the sale after the department has given notice of the auction, the lessee shall pay all costs incurred by the department in preparing the sale, including but not limited to:

(a) any costs incurred for preparation of documents required by 75-1-201, et seq., MCA;

(b) appraisal;

(c) survey;

(d) cultural resource inventory;

(e) natural resource inventories;

(f) public hearings;

(g) other costs that may be incurred by the department.

(3) The earnest money and bid deposit, as required in 36.25.808(4), paid by the lessee must be applied toward costs incurred by the department for the canceled sale.

(4) Any amount of earnest money and bid deposit remaining after payment of department costs must be returned to the lessee. (History: 77-1-204 and 77-2-308, MCA; IMP, 77-2-328, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.808 PROCEDURE FOR CONDUCTING STATE TRUST LAND SALES (1) All land sales are subject to the provisions of 77-2-318 through 77-2-326, MCA.

(2) The department shall set the date of the auction. Bidders may appear personally or be represented by a legally authorized representative.

(3) As required by 77-2-322, MCA, the department shall, at a minimum, publish notice of the auction in a newspaper of general circulation in the county where the auction is to take place, once each week for four consecutive weeks preceding the due date for bid deposits. The department shall post the notice on the department web site or other equivalent electronic medium and provide links to associated realty web sites when feasible.

(4) A person wishing to bid upon state trust land offered for sale at auction shall submit a bid deposit and execute a purchase agreement with the department. The bid deposit and purchase agreement must be postmarked no later than 45 days before the date of the auction.

(5) Subject to (6), land must be sold to the highest bidder who consummates the sale.

(6) In accordance with 77-2-324, MCA, the lessee has the preference right to match the high bid.

(7) The purchaser shall pay closing costs, including but not limited to:

(a) the cost of the appraisal;

(b) title insurance;

(c) filing fees;

(d) survey, if necessary; and

(e) water rights transfer.

(8) The department shall retain the bid deposit of the successful bidder. The department shall return the bid deposits of all unsuccessful bidders within five business days following the auction.

(9) If the highest bidder fails to consummate the sale for any reason, the department may offer the parcel to the next highest bidder at the final sale price. If the next highest bidder, or a subsequent bidder, in sequence of bid amount, agrees to the terms of the sale, that bidder shall complete a purchase agreement and submit a bid deposit to the department.

(10) If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale for any reason, that bidder's bid deposit is forfeit and must be credited to the land banking fund, after deduction of sale costs incurred by the department if the department has returned their bid deposit. (History: 77-1-204, 77-2-308, and 77-2-362, MCA; IMP, 77-2-328 and 77-2-363, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.809 SETTLEMENT FOR AND REMOVAL OF IMPROVEMENTS (1) If the parcel is under an agricultural or grazing lease or license with the state at the time of sale, settlement and removal of improvements are governed by the conditions of the lease or license or by ARM 36.25.125.

(2) If the parcel is under a residential lease at the time of sale, the conditions of settlement for and removal of improvements are governed by the lease or by ARM 36.25.131.

(3) If the parcel is under a commercial lease or license with the state at the time of sale, the conditions of settlement for and removal of improvements are governed by the lease or license.

(4) In all other situations, the purchaser of the state trust land shall reimburse the former lessee for the reasonable value of those improvements the purchaser has accepted.

(5) Where there is a dispute over the value of the improvements, arbitration, as detailed in 77-6-306, MCA, must be used to set the value of improvements. (History: 77-1-204, 77-2-308, 77-6-303, 77-6-304, 77-6-305, and 77-6-306, MCA; IMP, 77-2-328, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.810 FINAL BOARD APPROVAL AND ISSUANCE OF DOCUMENTS OF CONVEYANCE (1) Before issuing

documents of conveyance, the department shall present the proposed sale to the board.

(a) The board shall approve or disapprove the sale.

(b) If the land board disapproves the sale, the successful bidder is not responsible for costs.

(2) For the sale of land acquired from the federal government pursuant to the state's Enabling Act, the board may convey title through a state patent, pursuant to 77-2-341, 77-2-342, and 77-2-343, MCA.

(3) The board may convey title to other land by a grant or quit claim deed.

(4) The board may not warrant title to any land conveyed.

(5) The board may not give warranty or representation, express or implied, to a bidder for, or a purchaser of, state trust land concerning the accuracy or completeness of the title review for the property or the environmental due-diligence review investigating the presence or absence of toxic or hazardous substances.

(6) State trust land must be sold "as is." (History: 77-1-204 and 77-2-308, MCA; IMP, 77-2-328, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.811 THE LAND BANKING FUND (1) The proceeds from a sale of state trust land must be deposited in the land banking fund to which the land belonged.

(2) When the board conducts a sale of state trust land pursuant to the land banking program, the board shall distribute the proceeds according to the provisions of 77-1-109, 77-2-337, 77-2-361, 77-2-362, 77-2-363, 77-2-364, 77-2-365, 77-2-366, and 77-2-367, MCA.

(3) Proceeds from the sale of land from within individual trusts may be pooled to acquire tracts of land to add to state trust land, if approved by the board after consultation with the affected beneficiaries.

(4) If land banking expires in 2008, any proceeds remaining in the state trust land bank fund must be expended by the 10th year after the effective date of each sale.

(5) Any remaining proceeds must be deposited in the appropriate permanent trust fund.

(6) The department shall account separately for individual trust receipts.

(7) If land banking is authorized beyond 2008, the proceeds in the land banking funds must remain intact and available for land banking purposes. (History: 77-1-204, 77-2-308, and 77-2-362, MCA; IMP, 77-2-328 and 77-2-362, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.812 NOMINATION OF TRACTS FOR ACQUISITION (1) Any person may nominate a tract or tracts for acquisition.

(2) Nominations must be on a form issued by the department and must be sent to Land Banking, Department of Natural Resources, P.O. Box 201601, Helena, MT 59620-1601.

(a) Every person nominating land, except the department or the board, shall pay a nonrefundable $100 fee for each tract of land nominated.

(b) The department may not accept incomplete nominations.

(3) The department may contract with a third party, such as a licensed real estate agent, to act on behalf of the state in acquiring a tract or tracts.

(4) The department shall notify each trust beneficiary whose land sale proceeds would potentially support the proposed acquisition. Notice to the trust beneficiary must go to the contact person identified for each trust affected by the proposed acquisition.

(5) The department shall post all tracts nominated for acquisition on the department's web site or other equivalent electronic medium. The department shall update the status of the tract throughout the process, including all applicable reports. (History: 77-2-362, MCA; IMP, 77-2-364, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.813 PRELIMINARY REVIEW OF TRACTS NOMINATED FOR ACQUISITION (1) The department reserves the right to prioritize activities related to the acquisition of land.

(2) The department shall obtain from the seller and evaluate a disclosure statement that describes any known material defects in the property.

(a) The seller shall provide disclosure on a form provided by the department.

(b) If the seller fails to provide disclosure within 60 days of the department’s request, the tract must be considered unsuitable for acquisition.

(3) The department shall conduct a preliminary review to determine the tract’s suitability for acquisition. The review must address, but is not limited to, the following factors:

(a) the financial feasibility of acquiring and managing the tract;

(b) the existing level of access; and

(c) the potential for multiple use.

(4) Concurrent with the nomination of a tract and after the preliminary review, the department may secure the ability to purchase the tract, contingent upon approval by the board, as provided in ARM 36.25.814.

(5) If the department determines a tract is not suitable for acquisition, the department shall remove the tract from nomination and eliminate it from further review.

(6) Any person may appeal to the board the department's removal of a tract from nomination within 15 days of the department posting the report on the web site or other equivalent electronic medium. The board shall place the appeal on the next available agenda of a regularly scheduled meeting no later than 15 days before the meeting. (History: 77-1-204, 77-2-308, and 77-2-362, MCA; IMP, 77-2-328

and 77-2-364, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.814 PRELIMINARY BOARD APPROVAL TO PURCHASE LAND, EASEMENTS, OR IMPROVEMENTS (1) The department shall present the preliminary review of the nominated tract to the board.

(a) If the board disapproves acquiring a tract, the department shall remove the tract from nomination and eliminate it from further review.

(b) If the board approves the preliminary review, the department shall begin a due-diligence evaluation. (History: 77-2-362, MCA; IMP, 77-2-364, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.815 ANALYSIS, REVIEW, AND DUE DILIGENCE IN PREPARING TO ACQUIRE STATE TRUST LAND (1) The department may not purchase a tract, easement, or improvement pursuant to 77-2-361, 77-2-362, 77-2-363, 77-2-364, 77-2-365, 77-2-366, and 77-2-367, MCA, without preparing a financial analysis. The analysis must include:

(a) the annual return calculated over a 20-year accounting period;

(b) a 20-year average annual rate of return;

(c) a comparison with the current annual rate of return of the parcel or parcels sold, the proceeds of which are used to fund this transaction;

(d) a prudent determination that the acquisition is likely to produce more net revenue for the affected trust or trusts than the revenue that was produced from the land sold, and a greater or equal average annual rate of return as may be reasonably expected over a 20-year accounting period, with an acceptable level of risk for the affected trust or trusts; and

(e) the expected classification of the tract under 77-1-401, MCA.

(2) Before acquiring a tract, easement, or improvement, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. That duty requires the board to comply with the requirements of 72-34-114 and 77-2-364(3), (4), (5), MCA.

(3) The department shall prepare a description of each proposed acquisition. The description must include the following elements:

(a) an inventory of soils, vegetation, wildlife use, mineral characteristics, public use, recreational use, aesthetic values, cultural values, surrounding land use, zoning, planning information, weeds, floodplain information, water resources, fisheries, wetlands, and riparian characteristics;

(b) whether the tract is isolated. On a non-isolated tract, the department shall describe the existing level of access;

(c) the extent of infrastructure, such as roads, utilities, power, telephone, water, or sewer availability;

(d) whether and to what degree the purchase of the tract would affect access to other public lands;

(e) whether the tract is adjacent to other public land or private land under conservation easement, as documented in current information in the Montana natural heritage program database or similar source; and

(f) the status of subsurface mineral rights.

(4) Before acquiring any interest in land, the department shall conduct a due-diligence review as follows:

(a) conduct or review a current appraisal compliant with the Uniform Appraisal Standards for Federal Land Acquisition of the tract to determine fair market value by using comparable sales for like properties;

(b) review the title to the property proposed for acquisition and confirm that the seller is presenting a marketable title. Should the department identify any defects or encumbrances, the seller shall take steps to cure any title defects or remove the encumbrances to satisfy the department;

(c) if necessary, require a survey of the tract; and

(d) determine any limiting factors for future uses or development of the real property or the presence of toxic or hazardous materials. This may include, but is not limited to:

(i) phase I assessments, such as searches of government agency records and chain-of-title searches for evidence of property history and regulatory compliance, a review of permit applications, environmental health records, environmental compliance data, and other relevant information available from federal and state administrative agencies, discussions with former property owners and employees, and preliminary site visits;

(ii) phase II assessments, such as sampling of soils, water, and structural materials, well drilling, chemical analysis of samples, geotechnical survey, and a toxicological risk assessment.

(5) The department shall notify the appropriate board of county commissioners and adjacent landowners of the proposed acquisition. (History: 77-2-362, MCA; IMP, 77-2-364, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.816 FINAL APPROVAL OF LAND ACQUISITION BY STATE LAND BOARD (1) The department shall report to the board the complete findings compiled under the requirements of ARM 36.25.815.

(2) The department shall recommend whether acquiring the tract is in the best interest of the affected trust beneficiary.

(3) When prudently necessary to protect the interests of the affected trust beneficiary, the board may reject, modify, or approve the proposed purchase of any trust asset.

(4) Acquisition of a tract may not occur without final land board approval. (History: 77-2-362, MCA; IMP, 77-2-363, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

36.25.817 DOCUMENTS OF CONVEYANCE ON LAND ACQUISITION (1) Title to land acquired by the state must be by

warranty deed. (History: 77-1-204, 77-2-308, and 77-2-362, MCA; IMP, 77-2-328, MCA; NEW, 2004 MAR p. 2399, Eff. 10/8/04.)

**ACCESS ROAD EASEMENT POLICY**
**August 16, 2004**

**Introduction**

It is the intent of the Access Road Easement Policy to amend and replace the Private Driveway Policy adopted by the Montana Board of Land Commissioners [Board] on June 19, 1995. During the years the Private Driveway Policy has been in effect, changes have occurred in easement statutes enacted by the state legislature. The passage of several laws may be construed as providing inconsistent application of the Private Driveway Policy in the review and processing of easement applications for access roads by the Montana Department of Natural Resources and Conservation [Department].

The Access Road Easement Policy is developed by the Board and Department for the purpose of guiding applicants and the Department in the review and processing of applications for easements providing access to private lands for multiple uses. The policy may be used by an easement applicant or Department personnel to evaluate the prospect of obtaining a favorable review by the Board.

The criteria and text contained within this policy are intended as guidance only. Legal requirements, which shape the Board's review of all easement applications, are found with the Montana Constitution, state statutes and administrative rules.

Generally, access roads upon state trust lands may be granted for single or multiple family residences, farm and ranch management, timber resource management or all lawful purposes. Right-of-way grants for access roads enhance the value of private property while detracting from the value of the state land. While the State receives full market value for the property interest disposed of, this value often does not

offset the encumbrance placed on trust land. Furthermore, rights-of-way reduce the flexibility of state land management while increasing the risk of liability to the State. Since the duty of the Board and Department is to act as trustees and protect the long-term productivity of trust lands for the beneficiaries, care must be taken to create situations where rights-of-way benefit the trust. Means of minimizing detriment to the trust when granting rights-of-way include consideration of alternative road location, assurance that environmental impacts are mitigated, and evaluation with reference to a specified set of criteria.

The evaluation criteria contained in this policy generally articulate existing board policy with respect to access roads and will be applied to all applications received after the effective date of this policy. Typically, easements for access roads will be perpetual. However, the Board and the Department reserve the right to grant limited term easements to protect the long-term interests of the trust. Such term easements shall not exceed a term of 99 years. Applicants will be given the opportunity to discuss the merits of a grant for perpetual easement, rather than a limited term easement, before the Board.

Grantees of easements issued under the former Private Driveway Policy will be given the opportunity to request amendment of the purpose of their existing term easement to all lawful purposes. Additionally, the Department may provide any such grantees with a corrected easement document from the Department negating the 30-year limited term imposed on their access road easement through the former Private Driveway Policy.

Given the broad discretion granted by the Board, the criteria set forth below will assist the applicant and Department in evaluating how the Board will review the merits of a particular access application. The process of submitting and reviewing a right-of-way application is costly and time-consuming. Applicants who study this policy and evaluate the merits of a proposal prior to submitting an application will avoid the costs and frustration of an unfavorable review by the Department or Board.

**Review and Evaluation by the Department**

Before an application fee is received from an applicant, field staff should provide the applicant a copy of this policy. Before an applicant goes to the expense of surveying a proposed road (unless waived by the Department pursuant to §77-1-617), field review should be conducted by staff to determine the purpose and necessity of the right-of-way, as well as potential locations of alternative access that minimize or eliminate impact to state lands. Any permits required by other state and/or local authorities should be applied for by the applicant prior to review of the application for easement. See evaluation criteria number three below.

Applicants for access easements should submit proof of current ownership of private land to be accessed and maps detailing current land ownership adjacent to the affected state tract. Applicants are responsible for providing any information necessary for Department review pursuant to the evaluation criteria, including documentation of the applicant's legal access to the state tract and alternative access, if any, to the applicant's property. An applicant may be required to provide additional information upon request by the Department, including information necessary to complete the Department's environmental assessment.

Department personnel should evaluate an application for consistency with this policy and provide a recommendation to the Board for approval or denial. Department staff will provide the Board with an explanation supporting their recommendation that addresses how the application satisfies or fails to satisfy the criteria.

**Access Road Evaluation Criteria**

The Board and Department will review applications for easements for access roads considering the following criteria:

(1) Whether the granting of the easement will enhance the school trust asset;

(2) Easement impacts on the capacity of the affected trust lands to produce revenue and the extent to which the routing of the proposed easement mitigates impacts. As a practical matter, easement routes that follow state section lines or minimally cross state section corners are preferred;

(3) Compliance with all applicable federal, state, and local laws. The applicant should demonstrate the extent to which the proposed easement is consistent with federal, state and local management plans;

(4) Whether applicant has provided signed documentation of settlement of damages of leasehold interests of state surface lessees, if any, or can demonstrate that such settlement is being negotiated;

(4) Whether the easement applicant will grant the State of Montana a reciprocal easement to access lands managed by the Department;

(5) Whether the applicant already has legal access to their property across private or public land:

(a) In situations where the applicant has legal access to their property, applications for easements across trust lands are discouraged and will be presumed to be disadvantageous to the State. The applicant may overcome this presumption by clearly demonstrating either of the following through written documentation accompanying the application:

(i) Impacts to state trust land are insignificant; or

(ii) The construction and routing of alternative access across private property is impossible/impractical;

(a) In situations where the applicant does not have legal access to their property and the property interest was acquired without legal access, applications are discouraged. The Department may consider applications in extraordinary circumstances;

(b) In situations where the applicant does not have legal access, but the property was purchased with access that was subsequently lost, the applicant should attempt to purchase alternative access from neighboring land owners prior to submitting an application. In these situations, the Board may consider more favorably those applications that include written documentation of attempts to purchase access from all adjacent land owners;

(1) The environmental impacts of the proposed easement, as demonstrated by the Department's Montana Environmental Policy Act [MEPA] analysis or other sources of information reflecting visual, social, historical or cumulative environmental impacts; and

(2) Applications for "after-the-fact" easements for roads that were constructed or established in trespass after October 1, 1997 are discouraged and approval will be withheld except in extraordinary circumstances. The merit of rights-of-way for roads established without approval prior to October 1, 1997 will be evaluated on a case-by-case basis with reference to these criteria.

**Final Review and Approval by the Board**

When the Department and applicant have generated all information necessary for the Board's decision, the information will be reviewed and a determination made whether the proposed right-of-way is advantageous to the State. It is the Board's duty to disapprove any application that, in its opinion, would be disadvantageous to the State. The Board shall state its reasons for disapproving any access road application and such reasons will be reflected in the minutes of the Board Meeting.

Any easement that is granted will be restricted to the particular use(s) and corridor width applied for by the applicant. Any change or expansion of permitted use(s) and/or easement corridor without authorization from the Department subjects the easement to reversion by the state. A right-of-way grantee may submit an application for an amended easement if a need arises for uses or additional width needed that was not contemplated by the original easement

## APPLICATION AND APPROVAL OF SUBLEASING, PASTURING AND CUSTOM FARMING AGREEMENTS
**May 24, 1993**

### I. Authority

The authority for the Department to issue subleases, pasturing agreements and custom farming agreements is contained in § 77-6-208 and 77-6-212, MCA, and 36.25.119 and326.25.120 ARM.

### II. Objectives

(1) It is the objective of the Department that all subleases, pasturing agreements and custom farming agreements be filed and reviewed by the Department.

(2) It is the objective of the Department that no sublease, pasturing agreement or custom farming agreement will be made if all rentals or other payments due have not been paid.

(3) It is the objective of the Department that no sublease will be approved if the sub-lessee has a history of poor management or if the sublease is on terms less advantageous to the sub-lessee than the terms given by the state.

(4) It is the objective of the Department that no sublease, pasturing agreement or custom farming agreement will be approved for uses not authorized in the lease.

(5) It is the objective of the Department to inform lessees that subleasing may result in the loss of preference right as specified in § 77-6-212, MCA, and 26.3.144, ARM.

### III. Procedures

## Subleases

(1) Application

(A) A lessee who wishes to sublease state grazing or agricultural lands must make application on DSL form DS-420. Lessees wishing to sublease Homesite/Cabinsite or commercial leases must make application on form DS-420A. The appropriate form must be completely filled out and submitted to the Area or Unit Office responsible for the lands to be subleased, or the appropriate division office. For Homesite/Cabinsite or commercial subleases, a copy of any sublease agreement between the lessee and sub-lessee must be included with the application to verify terms and conditions of the agreement.

(B) A separate application must be submitted for each lease agreement to be subleased.

(C) A $25 application fee must be submitted for each application.

(D) The application must be signed by **all** parties to the lease agreement and notarized.

(E) The application must be signed by **all** sub-lessees and notarized.

(F) Each application must be submitted in triplicate.

(2) Department Review

(A) Each application should be reviewed for completeness. Applications which are incomplete, incorrect, or do not include the application fee, will be sent back to the lessee or sub-lessee with a letter explaining why the application is being returned.

(B) For other than commercial leases, if any information indicates the subleasing is for a profit, the application shall be denied and the lessee notified that such an arrangement can subject the lease to cancellation as required by §77-6-208(3) MCA.

(C) TLMS must be reviewed to verify there are no payments due for the lease(s).

Sections D, E, & F are Applicable to Ag, Grazing & Homesite/Cabinsite Leases Only

(D) If the application is complete and correct, the length of the sublease must be determined from the dates submitted on the application. A lease or sublease year runs from March 1 through February 28 of the following year. A sublease for any portion of that year constitutes a full year of subleasing. For example, an application to sublease from January 1 through December 31 is a two year sublease. In order to determine the total length of time the lease will be subleased, lease files must also be reviewed for previously approved subleases.

(E) A lessee may sublease for 2 years during the term of a lease with no loss of preference right at renewal. Subleasing for three years during the term of the lease results in the loss of preference right at renewal. Subleasing for more than 3 years is not allowed. Exceptions are, a lessee may sublease for a period of not more than 5 years during a lease term without loss of preference right if the sublease is only to a spouse, son, daughter, adopted child, or sibling of the lessee. A lessee may sublease _ or less acres of the lease for more than 2 years with no loss of preference right.

(F) If a sublease application is for longer than 2 years, or if the sublease application combined with previously approved subleases represents subleasing for longer than 2 years (other than the exceptions noted in "C"), the lessee must be notified that if the sublease is approved, they will have no preference right to renew the lease at expiration. If the sublease application represents subleasing for longer than 3 years (other than the exceptions noted in "C"), the lessee must be notified that the sublease can not be approved.

Sections G, H & I are Applicable to Commercial Subleases Only.

(G) All commercial sublease applications must be submitted to the appropriate bureau. Bureau staff will determine if the Department's lease agreement should be considered a commercial lease.

(H) Bureau staff will review the conditions of the sublease and the rental the lessee proposes to charge the sub-lessee.

(I) Based on the conditions of the sublease, bureau staff will determine if the lessee's rental rate should be adjusted and notify the lessee of any such adjustment.

(3) Approval

(A) Except for commercial subleases, if the application is complete and correct and all rentals are paid, the sublease may be approved by the Unit Manager, Area Managers or appropriate Division Administrator. Commercial subleases shall only be approved by Division Administrators.

(B) If the application is processed and approved at the Area or Unit Office, that office shall send one copy of the approved application to the lessee, one copy to the sublessee, and the copy with the original signature along with all fees to the appropriate Division office. Division staff will then enter the sublease into STLMS and file the approved sublease agreement in the Department's lease file.

(C) Cabinsite/homesite lessees who desire to sublease at terms other than those allowed for by 26.3.146(2) ARM, or their lease/license agreement, may apply to the appropriate division for reclassification to a commercial lease/license.

## Pasturing Agreements

(1) Application

(A) A lessee who wishes to allow pasturing of other livestock on state lands must make application on DSL form DS-430. The form must be completely filled out and submitted either to the appropriate Area or Unit Office, or the Department's main office in Helena.

(B) Applications which include more than one lease can be accepted as long as the lessee and livestock owner are the same.

(C) A $25 application fee must be submitted for each application.

(D) The application must be signed by **all** parties to the lease agreement and notarized.

(E) The application must be signed by **all** sub-lessees and notarized.

(F) Each application must be submitted in triplicate.

(2) Department Review

(A) Each application should be reviewed for completeness. Applications which are incomplete, incorrect, or do not include the application fee, shall be sent back to the lessee or sub-lessee with a letter explaining why the application is being returned.

(B) The application should be reviewed to verify the AUM's to be utilized do not exceed the carrying capacity set by the Department.

(C) Under a pasturing agreement, the lessee is certifying that they are: providing all costs for improvements and maintenance; making all decisions regarding rotations, livestock placement, and in/out dates; making all decisions regarding proper range management including placement of water, fencing and salt. As such, the lessee can charge the livestock owner a management fee not to exceed the current year's minimum AUM grazing rental set by DSL. This amount is applicable even if the lease was competitively bid. Additionally, the management fee can only reflect the AUM's utilized, and must be established upon a per AUM basis.

(D) If the Department determines that the application for pasturing agreement is being made to circumvent the subleasing laws or that the lessee is unable to provide all management decisions and costs, (e.g. lessee lives out-of-state, etc), the application shall be denied.

(E) If any information indicates the pasturing agreement is for a profit, the application shall be denied and the lessee notified that such an arrangement can subject the lease to cancellation.

(F) STLMS must be checked to make sure that there are no outstanding rentals due for the lease(s).

(G) All pasturing agreements shall be effective from March 1 through February 28 of the following year, or within this time frame as agreed to between the parties. In no case will the pasturing agreement term cross over into the next lease year. Pasturing agreements must be renewed annually.

(3) Approval

(A) If the application is complete and correct, the pasturing agreement may be approved by the Unit Manager, Area Manager or the Lands Division Administrator.

(B) If the application is processed and approved at the Area or Unit Office, that office shall send one copy of the approved application to the lessee, one copy to the livestock owner, and the copy with the original signatures along with all fees to the Department's main office in Helena. Helena staff will then enter the pasturing agreement into STLMS and file the approved agreement in the Department's lease file.

## Custom Farming Agreements

(1) Application

(A) A lessee who wishes to allow another party to farm state lands, must make application on DSL form DS-437. The form must be completely filled out and submitted either to the appropriate Area or Unit Office, or the Department's main office in Helena.

(B) Applications which include more than one lease can be accepted as long as the lessee and custom operator are the same.

(C) A $25 application fee must be submitted for each application.

(D) The application must be signed by **all** parties to the lease agreement and notarized.

(E) The application must be signed by **all** custom operators and notarized.

(F) Each application must be submitted in triplicate.

(2) Department Review

(A) Each application should be reviewed for completeness. Applications which are incomplete, incorrect, or do not include the application fee, shall be sent back to the lessee or sub-lessee with a letter explaining why the application is being returned.

(B) Under a custom farming agreement, the lessee is certifying that they are retaining all management and control of the lease and that payment to the custom operator is not based on a percentage of the crop.

(C) If any information indicates the custom farming agreement is based on a percentage of the crop grown, the application shall be denied and the lessee notified that such an arrangement can subject the lease to cancellation.

(D) The state shall not be subject to any reduction in rental as a result of the custom farming agreement.

(E) TLMS must be checked to make sure that there are no outstanding rentals due for the lease(s).

(3) Approval

(A) If the application is complete and correct, the custom farming agreement may be approved by the Unit Manager, Area Manager or the Lands Division Administrator.

(B) If the application is processed and approved at the Area or Unit Office, that office shall send one copy of the approved application to the lessee, one copy to the custom operator, and the copy with the original signatures along with all fees to the Department's main office in Helena. Helena staff will then enter the custom farming agreement into TLMS and file the approved agreement in the Department's lease file.

**ILLEGAL POSTING POLICY**
**January 28, 2002**

**Introduction**

The purpose of this policy is to provide guidelines that help insure thorough and timely methods for documentation and reporting of violations involving illegal posting of state land, and that also allow DNRC to effectively and equitably enforce the associated regulations in order to successfully prosecute and defend our actions in contested case situations.

Authority: ARM 36.25.133 RESERVATIONS

(3) The state reserves the right to sell or otherwise dispose of any interest….including hunting or fishing privileges on state land; however, the lessee or grazing licensee may post state land using blue paint to prevent trespass by unauthorized persons but may not use any other method, including orange paint, to post the land…"

ARM 36.25.121 CANCELLATION OF LEASE OR LICENSE

(1) The department may cancel any lease or license if the lessee or licensee…violates terms of the lease or license or these rules…"

(2) "…The board may reinstate the lease…and restore all rights and privileges. upon payment of a penalty up to 3 times the annual rental against the lessee…"

**Determination of Violations**

Determination of appropriate enforcement actions shall, subject to the following guidelines, remain at the discretion of the Area Mgr. or his/her designee:

If the posting(s) is blatant and consists of new, non-faded or non-weathered orange paint, unauthorized signs, etc. the violation is to be documented and reported to the Rec. Use Coordinator. In such cases, administrative enforcement actions will be taken against the violator. In other cases, involving faded or weathered paint or signs, individual judgment may be exercised in determining appropriate actions such as removal of posting by DNRC, notification to lessee to remove it, or reporting the violation for administrative action. In all cases, regardless whether formal administrative enforcement actions are taken, the illegal posting(s) will be required to be removed immediately.

**Documentation/Reporting Violations**

Reports of illegal postings should be investigated/documented as soon as possible and no later than 14 days after receiving such a report unless circumstances prevent these actions within that time frame. However, under no circumstance should investigation and documentation of the infraction exceed 30 days from the initial report or finding. Be absolutely sure the illegal posting is located on state land (use of a GPS unit is recommended if the boundary location is at all disputable). Also, check to see if the affected tract is enrolled in a BMA that may allow such posting. If a violation exists, summarize the situation, in writing, by noting the date of the inspection, recording the lease number and tract description, and taking a photo of each posting. Please include a recommendation for action in each case. Also, mark the location of each particular posting on a USGS quad map or aerial photo that includes the section, township and range and attach that map to this documentation. This documentation is to be sent to the Rec. Use Coordinator in Helena within the aforementioned 14-day period.
(Note: Documentation should be done regardless of whether administrative actions will be pursued.)Administrative Enforcement Action (completed by Rec. Use Coordinator)

***Note: Per provisions contained in ARM 36.25.121, penalty assessments may never exceed an amount greater than 3x the annual lease rental.*

**First Offense:**
The lessee will be provided written notification of the infraction, however, in lieu of lease cancellation, the department may, in most instances, offer to settle the violation provided the lessee pays a $100 fee within 30 days of receipt of the notification. In cases wherein DNRC has provided the lessee with a prior written warning for previous posting infractions, the settlement fee may range from $125-$150. If the settlement fee is paid within the 30 days, a letter that acknowledges receipt of the payment and grants release of further liability for the violation will be sent to the lessee. If the settlement offer is rejected or if payment is not received within the 30 days, the lease will be cancelled. In the case of cancellation, the department will recommend to the Land Board, a penalty of up to 2x the annual rental or whatever multiplier is required to equal or exceed $150.

****Second Offense:**
The lessee will be provided written notification of the infraction and that the lease is cancelled. In such case, the department will recommend to the Land Board a penalty of up to 3x the annual rental or whatever multiplier is required to equal or exceed a $250 penalty. If the lease is cancelled but the previous lessee participates in the competitive bid process for a new lease and submits the high and/or only bid, the department will recommend to the Land Board that the lessee be required to pay the penalty proposed for the infraction cited under the previous lease prior to granting the new lease.

****Third Offense:**
The lessee will be provided notification of the infraction and the lease will be cancelled without opportunity for reinstatement. Leases cancelled without opportunity for reinstatement are subject to appeal, beginning with an administrative hearing and may proceed up through District Court. If the lease is reinstated, the department will recommend to the Land Board that the violator be required to pay a penalty of up to 3x the annual rental or whatever multiplier is required to equal or exceed a $500 penalty. If the lease is cancelled without opportunity for reinstatement and is not appealed, but the previous lessee participates in the competitive bid process for a new lease and submits the high and/or only bid, the department will recommend to the Land Board that they reject that bid. In the event the Land Board accepts the bid, the department will recommend that the lessee be required to pay the penalty proposed for the infraction cited under the previous lease prior to granting the new lease.

** For purposes of determining appropriate administrative actions on any illegally posted lease, the number of offenses is based on the number of previous violations (does not include verbal or written warnings) issued to a lessee and is not specific only to a particular lease. As such, once a lessee is cited for illegal posting a particular lease, that violation will count as an offense for all subsequent administrative enforcement actions taken for illegal posting of any other lease they may have *Example*: John Doe holds state lease #'s 1,2 and 3. He is cited for first offense illegal posting on lease #1 and pays a $100 settlement. Later, he is cited for illegally posting lease #2 and #3. In such an instance, enforcement actions on both lease #2 and #3 would be based on the "second offense" guideline mentioned above

**LAND DONATION POLICY**
**February 12, 2003**

Whereas the Board of Land Commissioners' may need information for consideration of real property consisting of land or an interest in land (i.e., minerals, timber, water, etc.) and any building, structure or improvement located thereon which may be received by the State (other than State Trust Lands and lands received under other statutory authority) by virtue of estates and lands to be donated or transferred in lieu of monetary compensation due for fines and any other forfeitures or land donations; and

Whereas the Board of Land Commissioners has authority, direction and control over the care, management and disposition of state lands;

Whereas §77-1-211 thru 214, MCA, authorize the Board of Land Commissioners, on behalf of the state, to accept certain lands from the federal government and from any natural person as a result of gifts, donations, legacies, devises and other grants;

Whereas some agencies have independent statutory authority to accept real property for specific purposes and need not submit such transactions to the Board for approval unless the specific statutory authority so requires; and

Whereas certain information is needed by the Board to aid them in determining whether lands proposed for donation or transfer to the state are of a nature and condition that they will not be a burden should they be accepted and that they will be free and clear of any objectionable title encumbrances;

Unless the transfer is expressly provided for by other statutory provisions, the following information must be supplied and submitted to the Board, without cost to the Board or the DNRC; however, the managing agency of the state may elect to pay certain costs associated with the transfer as an enhancement to the offeror:

**APPRAISALS**: In accordance with §77-1-202(3), MCA, a current appraisal must be conducted by a qualified appraiser. Said appraiser shall be properly licensed and certified in the State of Montana to conduct said appraisal. An appraisal will be considered current that is no more than six (6) months old at the time the matter of the land acceptance is presented to the Board for its consideration and one (1) year old

at the time the property is transferred to the state. In some instances the board approval process takes longer than a year to complete, and in that case, the decision will be left to the managing agency to determine if an updated appraisal is necessary depending upon the type of property and circumstances. Said appraisal may be reviewed and approved by a qualified appraiser at the discretion of the proposed managing agency.

**LAND SURVEYS**: If the lands are an existing or legally established lot, tract, parcel, section or aliquot part of a section, an encroachment survey showing all monumented corners and the legal boundaries of the lands will be required. If the lands constitute a new break out or subdivision or are not able to be described as an existing legal subdivision (full section, aliquot part greater than 160 acres in size or a parcel already surveyed and legally platted and recorded), then a full survey and approval through the appropriate local County and state review processes will be required. The survey must be reviewed and approved by the proposed managing agency prior to recording.

**HAZARDOUS WASTE AND MATERIALS INVENTORY**: No lands will be considered for acceptance by the Board on which any non-removable or non-satisfactorily reclaimable materials, substances or contaminations exist. At a minimum, a current Phase I Hazardous Materials Survey (Haz Mat) shall be conducted by a state certified person or company and report provided to the state. A Haz Mat survey will be considered current that is no more than six (6) months old at the time the matter of the land acceptance is presented to the Board for its consideration. In some instances the board approval process takes longer than a year to complete, and in that case, the decision will be left to the managing agency to determine if an updated Phase I Survey is necessary depending upon the type of property and/or type of contamination and circumstances. Said survey must be reviewed and approved by the proposed managing agency. Any and all objectionable materials (i.e. dilapidated buildings, junk or abandoned vehicles, old tires, debris piles, etc.), substances or contaminations may be required to be removed from the property, at the discretion of the proposed managing agency, prior to the matter being presented to the Board for approval.

**TITLE REPORTS**: A current title report or title commitment in the name of the State of Montana as the proposed insured must be provided showing the current status of the ownership of the lands and all easements, leases, licenses, contracts for sale, liens, judgments, tax status, mineral rights or reservations, and all other matters of record which may affect the title to the property. A full copy of any and all easements, leases, licenses, contracts for sale, liens, judgments, tax notices, mineral rights or reservations, and all other matters of record that affect title will accompany the report or commitment. (A title report is a written ownership & encumbrance [O&E] report and is only good as of the certification date.) A title report or commitment is considered current if it is certified to a date within 2 months prior to the time the matter of the property is presented to the Board for its consideration. In some instances the board approval process takes longer than a year to complete, and in that case, the decision will be left to the managing agency to determine if an updated title report or commitments is necessary depending upon the type of property and circumstances. A special mineral title opinion issued by a qualified attorney may also be required. Objectionable matters may be required to be cleared before the state will agree to accept title in and to the property. On the day of the recordation of the title transfer document, an updated title report or commitment will also be required, certifying through the date and time of that recordation and showing that clear title is vested in the State of Montana.

**PUBLIC NOTICE**: A notice shall be published in a newspaper of general distribution in the area within the County where the lands are located notifying the public of the proposed donation or transfer. Public notice must include the legal description of the property and advise the public of the date, time, and place of the meeting of the Board of Land Commissioners in which the matter will be presented for their approval.

The public notice must be run at least once a week for two consecutive weeks, within the 30 days prior to the Board's meeting date. The managing agency is exempt from this requirement if they had already gone through the equivalent notice in the MEPA process. The proposing managing agency must also notify the Board of County Commissioners in the county or counties in which the property is located when receiving buildings or lands, so the tax rolls can be changed to show that the property is then tax exempt.

The following additional information must be supplied and submitted to the Board by the proposed managing agency, without cost to the Board or the DNRC; however, the managing agency of the state may elect to pay certain costs associated with the transaction as an enhancement to the offeror:

**PROPERTY INSPECTION REPORT**: To determine the suitability of the property for ownership by the State, the proposed managing agency must conduct an on-site, physical inspection of the property proposed as well as research and review historic and current records related to the ownership and use of the property and shall report to the Board the findings of the inspection and the research and review of the land use records. When conducting the physical inspection of the property, the proposed managing agency shall also observe and make note of the type and condition of the access to the lands (i.e., state highway, county road, city street, private road, etc.) and the land uses on adjoining and surrounding vicinity lands. The records research shall include, but is not limited to, past aerial photos, land ownership and survey records, and City, County and/or State land use records regarding the lands proposed for acceptance.

**SPECIAL CONSIDERATIONS FOR ACCEPTING DONATIONS**: In considering the acceptance of buildings, lands and interests in lands, special consideration must be given to the following:

(a) Conditions benefiting the donor or transferor, if any. These may include restrictions as to the type of use or access that may restrict or defeat a proposed managing agency's program purpose. Some examples may include a reservation of hunting rights or access to the donor; or stipulations of no hunting, no development, no vehicular access, timbering or no timbering, etc. Restrictions or reservations must be considered and negotiated on a case-by-case basis and must be allowed under the donation authority used. (b) Costs necessary to develop, manage, and maintain the property to meet objectives, satisfy special conditions, and to make revenue sharing payments. Such costs should be evaluated with benefits received by the proposed managing agency and the public.

(c) Significant future problems of administration if a donation is accepted subject to conditions imposed by the donor such as no hunting, no public access, etc.

(d) Legislative approval for certain federal lands in accordance with §77-1-211, MCA.

**ANTICIPATED USE**: An agency or department of the state proposing to receive lands must provide the Board with a statement of intent to accept the lands that outlines all of the above factors and indicates the proposed managing agency's anticipated use and management of the lands. Said donations shall be consistent with the mission of the agency or department involved and with applicable agency or departmental land-use plans. Upon acceptance of title, all lands accepted and acquired by the Board shall become public lands of the state and shall be subject to all applicable laws, rules and regulations for the administration of the same.

**TITLE TRANSFER DOCUMENTS**: All deeds and documents transferring title to the state must be reviewed and approved by the proposed managing agency's legal counsel before being recorded with the County Clerk & Recorder. Documents transferring title may not be placed of record until after securing the approval of the Board.

## LAND EXCHANGE POLICY
**March 21, 1994**
**Revised December 20, 2004**

### INTRODUCTION

This policy was developed by the Montana Board of Land Commissioners for the purpose of guiding applicants for land exchanges and the Department of State Lands (now Department of Natural Resources and Conservation) in the processing and review of land exchange proposals. The policy may be used by an exchange applicant or Department of Natural Resources and Conservation (department) personnel to roughly evaluate the prospects of obtaining favorable review by the Board of Land Commissioners (board).

The ability of the state to effectively manage the public land trust for the support of education has been limited by the fragmented ownership of the 5.2 million acres of state trust lands. An inclusive and consistent land exchange policy is needed for future consideration of beneficial exchange proposals. The criteria and text contained within this policy document are intended as guidance only. Legal requirements, which shape the board's review of land exchanges, are found within the Montana Constitution, state statutes, and administrative rules. Selected legal provisions are included in the appendix to this policy. Two key-provisions merit emphasis. The Montana Constitution provides:

Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

Mont. Const. art X, § 11 (4) Additionally, Mont. Code Ann. § 77-2-207 provides:

The board has the power and it is its duty to disapprove any exchange which in its opinion would be disadvantageous to the state. Given the broad discretion granted the board, the following policy will assist applicants and department personnel in evaluating how the land board will review the merits of a particular exchange. The goal is to promote exchanges which produce an advantage to the state and its trust funds and to discourage exchanges which are disadvantageous to Montana. A subjective, but practical, rule of thumb the board will use in approving an exchange is assuring itself the trade is a "good deal" for the state.

The process of submitting a land exchange application is costly and time consuming; numerous laws and trust principles govern the process.

Applicants who study this policy and evaluate the merits of a proposal prior to submitting an application should avoid the costs and frustration of unfavorable review by the department or board.

The land exchange process may, at the department's discretion, be facilitated by the proponent of the land exchange. To facilitate the process:

1. The proponent, in consultation with the department, selects a contractor to administer the land exchange process.
2. The entity(ies) contracted to complete the tasks associated with the land exchange will receive written instruction from the department on the scope of work for all tasks, including, but not limited to appraisal, MEPA analysis, survey, timber cruising, etc.
3. The contractor(s) will provide the proponent with an estimate of costs based on the scope of work determined by the department.
4. The proponent must enter into a written and signed agreement with the department to pay for mutually agreed upon costs associated with the land exchange.
5. The department reviews and determines the adequacy of all documents used in the land exchange.
6. All documents produced for the land exchange by the contractor and appraiser are the property of the department.
7. The department is the decision making authority in the Montana Environmental Policy Act (MEPA) analysis, and retains all authority and responsibility to manage the land exchange process and provide recommendations to the board.
8. The contractor bills the proponent of the land exchange directly upon department approval of the deliverables.

## PRELIMINARY EVALUATION BY THE DEPARTMENT

To streamline the review process, the department will initially screen exchange proposals. Proposals that satisfy the land exchange criteria described below will be offered for public comment by the department. Following solicitation of public comment, the department will prepare a report and forward the exchange proposal to the board for review authorization. Proposals which do not meet the criteria or fail to comply with Montana law may be rejected by the department Director following preliminary evaluation by the department without review by the board.

The board recognizes that some land exchanges may clearly be in the state's best interests, but may fail to satisfy all seven criteria outlined below. The department and the board are unable to waive the fulfillment of criteria numbered one through three (value, lands bordering water bodies, and income). These criteria are based on legal requirements. However, in exceptional circumstances where the presence of outstanding public benefits clearly outweighs the absence of one of the other exchange criteria (acreage, consolidation, potential for appreciation, access), the department may waive satisfaction of the criterion, solicit public comment during preliminary evaluation, and forward the proposal to the board for its review.

### A. Land Exchange Criteria

**1. Equal or greater value**

Land to be acquired by the state must be at least as valuable as the state land being exchanged. The starting point for this determination is the value, in terms of money, of real estate in a typical market as determined through an appraisal conducted by a real estate appraiser certified in accordance with Mont. Code Ann. § 37-54-101, et seq. The department may use information provided by the applicant or its own knowledge of affected lands and resources to estimate value for purposes of preliminary evaluation. Following review authorization by the board, a certified appraiser must be retained to estimate value as per Uniform Standards of Professional Appraisal Practices. The appraiser must consult with the department regarding the scope of work prior to conducting an appraisal.

The value of exchanged state lands must be determined by the highest and best use of the land, not simply the present use. For example, if the exchange were proposed in which the state lands were currently leased for grazing and the land was in the path of urban or commercial development, the land would be considered for valuation in the appraisal to its highest and best use for residential or commercial development rather than the present use as grazing land.

In general, trust land must be valued in two ways. First, the highest and best use of the land with discounts applied to the land for access or other limiting factors. Second, the highest and best use of the land without any discounts. The department will then arrive at a value for trust land proposed for exchange, and make a recommendation to the board. This valuation process will apply to exchanges with federal or state governmental entities at the discretion of the department.

Mont. Code Ann. 9 77-2-205 prohibits exchanges that encourage "large scale commercial, industrial, or residential development," unless the value of the resulting development is considered in determining the value of the exchanged lands. Consequently, if an exchange is proposed in which state lands classified for the production of crops will be used by an exchange applicant for commercial development, the exchanged state land is appraised considering its developed, commercial value instead of its value as agricultural land.

The department will consider intrinsic values in evaluating the relative value of lands to be exchanged. By definition, these types of values are often not reflected in the market price and are difficult to assign a dollar amount. Regardless, the department will attempt to consider such values as location, proximity to public lands, recreational opportunities, scenery, and other amenities in determining relative value.

**2. State land bordering on navigable lakes and streams**
According to Mont. Code Ann. § 77-2-203(2), state lands that border navigable lakes, streams, and other bodies of water with significant public use values may only be exchanged for lands that border similar bodies of water.

**3. Equal or greater income to the trust**
A land exchange must result in the state receiving equal or greater income for the trusts. The projected income for the lands acquired by the state will be estimated at the minimum lease rate, without speculating about possible competitive bidding. This income will be compared to the present income to the trusts of the lands to be exchanged from all leases, licenses and other sources. For purposes of comparison, the department will also consider identifiable future incomes, including income from the extraction of natural resources such as minerals and forest products. Where state lands proposed for exchange generate greater income than lands to be acquired, the applicant may design and propose a method of compensating the trusts to satisfy this criterion.

**4. Equal or greater acreage**
As set forth above, the Montana Constitution requires that exchanged state lands and acquired lands be, "as closely as possible, equal in area." The board interprets this language to allow the consideration of exchanges that would not result in the exchange of virtually identical acreages. For example, the board might consider receiving less acreage in return for substantially higher value or income, or both. As a general rule the board prefers to receive equal or greater acreage.

**5. Consolidation of state lands**
A land exchange should be at - least neutral in its net effect on the consolidation of state land: the exchange must not further fractionalize state land holdings by creating isolated parcels of state land. Similarly, an exchange should not sever a mineral estate from a surface estate. The department will place priority on exchanges which result in *consolidation of state lands in accordance with Mont. Code Ann. § 77-2-203. Consolidation of state lands facilitates land administration and aggregated state land often has greater value and revenue potential.

**6. Potential for long-term appreciation**
The land acquired by the state should be as likely to increase in value or revenue potential as the state land exchanged. It is essential that the department and the board protect the long-term interests of the trusts. Assuming that other criteria are satisfied and no outstanding public benefits accompany the exchange, rapidly appreciating residential or recreational property will not be exchanged for agricultural land although the parcels have equivalent present value.

**7. Access**
A land exchange should not diminish the amount of access to state lands or other public lands. Accessible state land that is proposed for exchange should be-replaced with acquired lands-that offer similar recreational opportunities. Additionally, state lands with public access often have greater income-generating potential because surface uses are subject to competitive bids.

### B. Solicitation of Public Comment

Provided the department determines that a proposed land exchange satisfies all the exchange criteria or has outstanding public benefits, public comment will be solicited. The department will solicit comment through mailings to interested parties, newspaper advertisements or public meetings. Additionally, the department will give notice of the proposed exchange to any person who has leased or who holds a license for any portion of state land involved in the exchange. The department will prepare a written summary of all public comment received on the proposed exchange.

### C. Preliminary Report by the Department

Following the department's preliminary evaluation and public comment period, the department will forward the proposed exchange to the board for review authorization. The department will prepare a preliminary report for the board that includes the following:

(1) a summary discussion of how the exchange meets or exceeds each of the seven exchange criteria;
(2) a summary of public comment received on the exchange;
(3) a description of outstanding public benefits, if any, attendant with the exchange;
(4) department concerns or opinions of the merits of the proposed exchange;
(5) department recommendations for specific direction from the board for further review, if any, of the proposed exchange; and
(6) an indication of the applicant's commitment to fund the costs of the department's detailed review or the department's commitment to assume or share these costs.

The evaluation of land exchange proposals creates a substantial demand upon department personnel and no funding has been allocated for these efforts.

Consequently, the board will not grant the department review authority unless the private applicant agrees to pay for ascertainable review costs the department is unable to assume--staff time, environmental assessment, cultural inventory, natural resource inventories (timber cruise or mineral survey where necessary), public hearing, title reports, and appraisals. The payment of such costs does not assure that the applicant will receive favorable review by the board. The department or other public agency may elect on a case-by-case basis to assume or share review costs of any private exchange determined to warrant the assumption of such obligations. Where an exchange applicant is a governmental agency, the board may direct the department to share the payment of costs.

Although an exchange minimally meets the established exchange criteria, the department may recommend in its report to the board that the exchange be disapproved as disadvantageous to the state. The board recognizes that some land exchanges may minimally meet legal and policy criteria but not create an advantage to the state that would justify further review or approval.

## II. REVIEW AUTHORIZATION BY THE BOARD

Upon receipt of the department's report, the board shall consider the specific recommendations of the department and public comment, and evaluate the merits of the land exchange. The board will determine at this stage whether further review and public hearing by the department are justified.

The board may grant the department blanket authority to direct the completion of all documents necessary for final consideration of the exchange, including an environmental assessment, cultural inventory, and land appraisals, and to conduct a public hearing. Alternatively, the board may direct the department to complete specific and narrow tasks relating to the merits of the exchange and report back to the board with findings before proceeding further. For example, the board might direct the department to complete a timber cruise and appraisal of timber value on particular state lands proposed to be exchanged before any further action is taken.

It is the Board's strong preference that a proposed exchange not only meet the identified criteria, but provide a clear public benefit by exceeding one or more criteria. For example, if a trade satisfies all the criteria and results in significantly higher income or land values being added to the trusts, the exchange would be a "good deal" for the state. Another example of a favorable exchange might involve the transfer of an isolated or "landlocked" state parcel (a state section that is surrounded by private land), where the proposed trade satisfies all the criteria, and the lands to be acquired are adjacent to public lands with public access. Where a proposed exchange simply satisfies the exchange criteria, the board may exercise its discretion to suspend further review and disapprove the application as disadvantageous to the state.

Finally, as previously stated, a proposed land exchange may only minimally satisfy the exchange criteria (or fail to meet one of the criteria numbered four through seven), but present outstanding public benefits that clearly make the exchange advantageous to the state. Such public benefits might include the substantial reduction of management costs, increased recreational opportunities, economic growth, enhancement of environmental interests such as wildlife habitat or water quality, preservation of the social structure of a community or other identifiable benefit to the state. While these exchanges are the exception to the rule, the board in extraordinary circumstances may review the public benefits identified and authorize the department to complete a detailed review.

## Ill. REVIEW BY THE DEPARTMENT

Acting under the direction of the board, the department will direct the preparation of a study reviewing the merits of the proposed exchange, environmental consequences, effects on cultural resources, appraised land values and any other factor deemed to affect the public interest. The department will report back to the board as specific information is generated and further review authorization is required.

Mont. Code Ann. § 77-2-204(2) requires that the department conduct a public hearing on the proposed exchange in the county containing the state land to be exchanged. Written notice of this hearing will be provided to any person who has leased or held a license on any portion of land involved in the proposed exchange. The department should conduct the public hearing at such time as details of the final exchange proposal are established and sufficient information is available to promote meaningful comment.

Upon final completion of its tasks, the department will present a detailed report and its recommendation to the board for final review and approval. The department's report and recommendation will be made available to all interested parties prior to any board action.

## IV. FINAL REVIEW AND APPROVAL BY THE BOARD

When the board is satisfied that the department and applicant have generated all information necessary for its decision, the information will be reviewed and a determination made whether the proposed exchange is advantageous to the state. It is the board's duty to disapprove any exchange which in its opinion would be disadvantageous to the state. The board shall state its reasons for approving or disapproving any land exchange and such reasons shall be reflected in the minutes of the board's meeting.

**Montana Constitution, Article X, section 11**

**Public land trust, disposition.** (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may b e provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

Montana statutes applicable to the exchange of state land generally:

**77-2-201. Exchange of land with United States- or tribal** governments. (1) (a) The board may enter into contracts or agreements with the United States or any department thereof having jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16 and 36 of any township and to any other parcel of state lands, provided that the state shall, in lieu of the rights so waived and relinquished, -receive from the United States other lands of equal or greater value.

(b) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with P.L. 88-607, as amended, (43 U.S.C. 1411 through 1418), and the current user of the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

(2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102 or with the United States for the relinquishment to the tribal government or to the United States in trust for the tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries of the tribal government's reservation as recognized by the federal government; however, the state, in exchange for these relinquished rights, must receive from the tribal government or the United States lands of equal or greater value. No contract or agreement may be entered into under this section without first consulting with the board of county commissioners of the county or counties in which the lands to be exchanged are located.

**77-2-202. Exchange of land with counties.** The board may accept on behalf of the state title in fee simple to any land owned by a county in the state and may convey in exchange therefore state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

**77-2-203. Exchange for private land.** (1) The board is authorized to exchange state land for private land provided that the private land is of equal or greater value, as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as possible equal in area. The contents of the appraisal must be made available to any person who makes a written request to the board. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107 [natural areas].

(2) If the requirements of subsection (1) and 77-2-204 are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or. other bodies of water.

**77-2-204. Notification of proposed exchange - hearing.** (1) Upon receipt of a proposal for an exchange of land under this part, the board shall give notice of the proposed exchange by certified mail to each person who has leased, under chapter I of this title, any portion of land involved in the proposed exchange. Any such leaseholder may present written or oral comments on the proposed exchange to the board before or during the hearing required by subsection (2). The notice must contain a statement informing the recipient of this right to comment.

(2) A public hearing on any exchange under this part shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised before or during any such hearing pursuant to subsection (1), the board shall make findings of fact responding to such objections and explaining their action.

**77-2-205. Restriction on exchange for private land.** No exchange under 77-2-203 shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which

the state would receive under the proposed exchange.

**77-2-206. Settlement for improvements.** If any state land is exchanged on which there are improvements belonging to a lessee and some person other than the lessee is the transferee, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the exchange is completed. The provisions of 77-6-301 through 77-6-306 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the transferee in an exchange. If settlement is not reached within 6 months of date of exchange, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

**77-2-207. Approval or disapproval of exchanges.** All exchanges of state lands are subject to approval and confirmation by the board, and no exchange is considered completed until after such approval and confirmation. The board has the power and it is its duty to disapprove any exchange which in its opinion would be disadvantageous to the state.

Montana statutes applicable to the exchange of timbered, cut-over, or burned-over lands:

**77-1-204. Power to sell, lease, or exchange certain state lands.**
(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 [lands donated for forestry purposes) when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into.

**77-2-211. Exchange of timbered, cut-over, or burned-over lands**. The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange therefore may convey not to exceed an equal value, as determined by the board after appraisal by a qualified land appraiser, of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in 77-2-303(3), 77-2-311, and 77-5-101, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

**77-2-212. Rules.** The board shall adopt and promulgate such rules and methods of procedure affecting or touching the exchanges of lands under 77-2-211 through 77-2-217 as in its judgment seems advisable to the end that the public interests may be conserved.

**77-2-213. Department to investigate.** When a proposal for an exchange pursuant to 77-2-211 is made and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department and the department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

**77-2-214. Investigation and findings concerning exchange of land.** (1) The department shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal, including its reasons therefore in writing.

(2) After considering the report and recommendation and making such further investigation as it considers advisable, the board shall consider the entire matter, make findings and conclusions concerning the proposal, and make an order:

(a) rejecting and dismissing the proposal if in the judgment of the board the exchange is not in the public interest; or

(b) Accepting the proposal and ordering the exchange to be made if in the judgment of the board the exchange is in the public interest and should be made.

(3) An order accepting the proposal shall contain an accurate description of all lands to be exchanged.

**77-2-215. Notice and hearing concerning exchange of timbered lands.** If the board approves a proposal for exchange pursuant to 77-2-211, the department shall publish at least once in some newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and ownership thereof. The notice shall fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

**77-2-216. Final order of board.** The board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211.

**77-2-217. Status of exchanged lands.** All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, shall be subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to. All lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States.

**POLICY CONCERNING THE INVENTORY,**

**EXCAVATION, COLLECTION, AND DISPOSITION OF**

**CULTURAL AND PALEONTOLOGIC RESOURCES OWNED BY**

**THE STATE OF MONTANA**

**October 21, 2002**

## I. OBJECTIVE

The objective of this policy is to establish guidelines that the Montana Department of Natural Resources and Conservation (DNRC) will follow for legal disturbance, removal, display, or disposition of paleontologic resources and heritage properties from lands owned by the state of Montana and administered by the DNRC. While carrying out the terms of this policy, it is the intent of the DNRC to:

(1) generate revenue for the School Trust from collected\documented state owned cultural and paleontologic resources;

(2) increase the value of collected\documented state owned cultural and paleontologic resources for the School Trust; or

(3) further the education of the scientific community and the general public through the preservation, documentation and display of state owned cultural and paleontologic resources.

This policy will be carried out in accordance with other DNRC policy and statute concerning state land management issues.

## II. AUTHORITY

The DNRC is charged (77-1-301 M.C.A.; A.R.M. 36.2.1001 et seq.), under the direction of the State Land Board, with selecting, appraising, exchanging, classifying, leasing, managing, selling, or otherwise disposing of state lands and resources. As established in the Montana State Antiquities Act (22-3-424 M.C.A.), state agencies shall, in consultation with the Montana State Historical Society, identify, develop, and adopt rules, methods, and procedures for the identification and preservation of heritage properties and paleontologic remains on lands owned by the state so that heritage properties and paleontologic materials are given appropriate consideration in state agency decision making. The mandates of the Montana State Antiquities Act are implemented, in part, by the DNRC at A.R.M. 36.2.801 et seq.

The Montana State Antiquities Act (22-3-421 M.C.A. et seq.) thus provides limited protection for **significant** archaeological and historic properties (heritage properties) and paleontologic resources on state lands. Heritage properties can be either cultural resource sites (archaeological or historic properties) or artifacts. Cultural resource sites (including districts) are defined here as arbitrarily or factually defined areas that contain tangible manifestations of past human behavior. A heritage property is a cultural resource site or artifact that retains sufficient integrity of location, design, setting, materials, workmanship, feeling, and association **and** it has been demonstrated to be **significant** for its association with at least one of the four following criteria as defined by the National Park Service in National Register Bulletin #15:

(1) Criterion A—Association with events that have made a **significant** contribution to the broad patterns of our local, regional, or national history;

(2) Criterion B—Association with the life or lives of a person or persons **significant** in our local, regional, or national history;

(3) Criterion C—If a property embodies distinctive characteristics of a type, period, or method of construction, or if it represents the work of a master, or if it possess high artistic values, or if it represents a significant and distinguishable entity whose components may lack individual distinction; or

(4) Criterion D—If a property has yielded, or may be likely to yield, information **important** in our local, regional, or national history or prehistory.

As defined in the Montana State Antiquities Act, paleontologic remains are "fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research".

The Montana State Antiquities Act is clear in that "no person may excavate, remove, or restore any heritage property or paleontologic remains on lands owned by the state without first obtaining an antiquities permit from the historic preservation officer (22-3-432 M.C.A.)." The state historic preservation officer (SHPO) is appointed by the governor and is supervised by the director of the Montana State Historical Society. In part, the duties of the SHPO are to conduct an ongoing state wide survey of heritage properties and paleontologic remains and to maintain a database of the inventory results; and to advise state and federal agencies in their responsibilities concerning relevant historic preservation laws. Antiquities permits are to be granted only after careful consideration of the application for a permit and after consultation with the effected state land managing agency. Antiquities Permits are subject to strict compliance with the following:

(a) Antiquities permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions, societies, or persons with a view toward dissemination of knowledge about cultural or paleontologic properties, provided no such permit may be granted unless the historic preservation officer is satisfied that the applicant possesses the necessary qualifications to guarantee the proper excavation of those sites and objects that may add substantially to man's knowledge about Montana and its antiquities.

(b) The antiquities permit must specify that a summary report of such investigations, containing relevant maps, documents,

drawings, and photographs, be submitted to the historic preservation officer. The historic preservation officer shall determine the appropriate time period allowable between all work undertaken and submission of the summary report.

In addition to obtaining a State Antiquities Permit, no one may excavate or remove paleontologic remains or heritage properties from state land administered by the DNRC prior to obtaining a **Paleontologic\Cultural Materials Collection License** from the DNRC archaeologist or the DNRC Trust Land Management Division administrator. An Antiquities Permit alone is **not** authorization to disturb, excavate, or remove heritage properties or paleontologic resources from state lands administered by the DNRC. A Paleontologic\Cultural Materials Collection License will be granted only to those individuals that hold, at a minimum, a Masters Degree in history or anthropology (for the collection of heritage properties), or geology or biology (for the collection of paleontologic remains) **and** have at least five years of relevant, applicable field experience. Further, a Paleontologic\Cultural Materials Collection License should only be issued after consultation with the applicable DNRC Unit, or Area, Manager and the Montana State Historic Preservation Officer. A separate **Land Use License**, issued by the appropriate DNRC field office, will be required for individuals or groups who intend to visit or tour an excavation\collection site where work is being, or once was, carried out under the terms of a Paleontologic\Cultural Materials Collection License. An Antiquities Permit, Paleontologic\Cultural Materials Collection License, or Land Use License is not required for individuals conducting non-collecting inventory of cultural or paleontologic resources on state lands administered by the DNRC when that work will assist the DNRC in it's responsibilities to comply with the Montana State Antiquities Act.

## III. DATA RECOVERY AND COLLECTION PLANS

Prior to the issuance of a Paleontologic\Cultural Materials Collection License, the DNRC archaeologist will approve a data recovery or collection plan for proposed excavation or collection work. The data recovery plan will detail, at a minimum:

(1) the kind of work proposed;

(2) a legal description, reduced to the smallest reasonable ¼ of ¼ section, of the work proposed including a 1:24,000 scale topographic map with the collection site locale indicated;

(3) the proposed access routes to and from the tract along with proof of appropriate permission to cross lands not administered by the DNRC (when applicable);

(4) the methods in which data will be recovered, catalogued and analyzed;

(5) the kinds of research questions expected to be addressed with the recovered data;

(6) a detailed natural resource rehabilitation plan (to be developed in consultation with the appropriate DNRC Unit, or Area, manager);

(7) the expected duration of the proposed surface collection or excavation project; and

(8) the physical location where collected specimens will be stored while they are being analyzed and catalogued.

The DNRC archaeologist may reject, or request modifications to, the data recovery\collection plan. A Paleontologic\Cultural Materials Collection License will not be issued until the terms of the data recovery\collection proposal are approved.

## IV. REPORTING, CATALOGING, AND CURATORIAL REQUIREMENTS

All cultural or paleontologic inventory, collection, or excavation work conducted on state lands administered by the DNRC must be followed with a technical report that details various aspects and results of the work conducted. All previously undocumented cultural and paleontologic sites identified during the course of the field work must be recorded on site forms acceptable to the DNRC and submitted for Smithsonian Trinomials to the Archaeological Records Office at the University of Montana. Finalized copies of the site forms must be forwarded to the DNRC as well as a copy of the final technical report. Reporting standards acceptable to the DNRC for inventory and limited evaluation work can be found at:

**Guidelines for Conducting Cultural\Paleontologic Resources Inventory Work on Montana State Lands**. Unpublished manuscript on file with the DNRC Archaeologist, Helena, MT.

Reports concerning data recovery through surface collection or excavation will follow the aforementioned reporting standards, but they will also detail the methods and results of that work. The reporting responsibilities of the individual or organization assigned a Paleontologic\Cultural Materials Collection License will not be retired until the DNRC archaeologist deems the final report to be complete and acceptable.

Each collected item of cultural or paleontologic material will be assigned a catalogue number and that catalogue number will, in part, reference the Smithsonian Trinomial assigned to the site where the specimen was collected. Specimen numbers can either be applied in a legible, permanent manner to the specimen, or can be included on a label that is attached to, or included with, the specimen in a plastic baggie or other appropriate container. Only one specimen per container\specimen number is acceptable to the DNRC. When all collected specimens have been assigned catalog numbers, a copy of the catalog sheets will be sent to the DNRC archaeologist. Each catalog number must, at a minimum, cross reference the Smithsonian Trinomial assigned to the site, the provenience of each collected\documented specimen, and what the specimen is. Some indication should also be made in the catalog sheets to indicate where the collected specimens are being, or will be, curated.

The individual directly overseeing the curation of cultural or paleontologic materials collected from DNRC administered state lands must meet the same academic and fieldwork experience standards as required for the issuance of a Paleontologic\Cultural Materials Collection License. Once an individual that will provide curatorial oversight, and a curatorial facility, acceptable to the DNRC are identified, a **Curation License** will be issued by the DNRC archaeologist to the individual with curatorial oversight. It is preferable to the DNRC to display and curate cultural or paleontologic materials collected from DNRC administered state lands in local museums or other educational facilities. The location of the curatorial facility for collected cultural or paleontologic materials will be stated by the DNRC in the applicable Paleontologic\Cultural Materials Collection License and the corresponding Curation License. When a curatorial facility wishes to no longer store or display cultural or paleontologic materials collected from state lands administered by the DNRC, those materials must be delivered, at the current curator's expense, to another curatorial facility that is acceptable to the DNRC.

Collected paleontologic and cultural materials must be curated in a facility that is dry, leak proof, rodent and insect proof, and in a facility that will not expose stored or displayed specimens to direct sunlight. Fossils or cultural materials that are considered to be common, or to have limited scientific or cultural value, can be stored or displayed in a facility that meets the aforementioned requirements and exhibits, at a minimum, locking doors and windows. Fossils or cultural materials that are considered to be rare, unique, or of scientific or cultural value should be stored or displayed in a facility that meets the aforementioned requirements and exhibits a heightened set of security standards acceptable to the DNRC. At a minimum those security standards should consist of:

(1) stationary, or locking rectractable, sliding or swinging metal grills inside of windows;

(2) solid, one-piece doors on solid frames with functioning, keyed locking knobs and deadbolts; and

(3) functioning electronic burglar and fire alarm systems that can be monitored from the local sheriff's office, or the home or business of a designated party acceptable to the DNRC.

## V. FEES AND DISPOSITION

No one may profit from the collection or sale of genuine or reproduced cultural or paleontologic materials from state lands without due compensation to the state. All heritage properties and paleontologic remains collected under an antiquities permit, and a corresponding Paleontologic\Cultural Materials Collection License, are the permanent property of the state and must be deposited in secured institutions within the state or loaned to qualified institutions outside the state, unless otherwise provided for in the antiquities permit and a Curation License or Disposal Agreement issued by the DNRC. As such, no authority will be granted for the commercial or private collection of heritage properties or paleontologic remains from Montana state lands that remove cultural or paleontologic materials from state ownership without the state of Montana first obtaining full market value for those resources through the issuance of a disposal agreement. Loans of cultural or paleontologic materials must include a fee. Paleontologic\Cultural Materials Collection Licenses, Curation Licenses, and Disposal Agreements will be issued by the DNRC archaeologist or the DNRC Trust Land Management administrator. Applications for Paleontologic\Cultural Materials Collection Licenses, Curation Licenses, and Disposal Agreements will each require a nonrefundable $25.00 fee (77-1-302 M.C.A.; A.R.M. 36.2.1003). The applicable DNRC Area, or Unit, Manager may also assess a bonding fee to the Paleontologic\Cultural Materials Collection License. Fees collected from applications will be deposited into the general fund. Fees collected from licenses, loans, and sale of genuine or reproduced cultural or paleontologic materials recovered from state owned lands will be directed to the grant for the tract where the resources were removed.

## VI. PROCEDURE

Anyone who wishes to collect or curate Heritage Properties or paleontologic materials from state lands administered by the DNRC should begin the process by contacting the DNRC Archaeologist in writing and outlining what, specifically, his intentions are. If an applicant is dissatisfied with the findings or position of the DNRC archaeologist, the applicant should appeal his case to the DNRC Trust Land Management Division administrator.

## VII. PENALTIES

No person may reproduce or falsely identify any heritage property or paleontologic remains with the intent to sell the property or remains as an original. No person may sell any heritage property or paleontologic remains with the knowledge that the property or remains have previously been collected or excavated in violation of 22-3-432 M.C.A. A person violating any provision of (22-3-432, 22-3-435, or 22-3-441 M.C.A.) is guilty of a misdemeanor and upon conviction shall be fined not more than $1,000 or be imprisoned in the county jail for not more than 6 months, or both. Each day of continued violation constitutes a distinct and separate offense (22-3-442 M.C.A.). In addition to Antiquities Act penalties, the DNRC may exercise its administrative prerogative to seek penalties for civil or criminal trespass and conversion, or unlawful disturbance of state lands under 77-1-125, 77-1-801, 45-6-203, or 45-6-204 M.C.A., or other criminal or civil sanctions that may be available and appropriate in each circumstance.

## POLICY FOR LICENSING STRUCTURES IN, OVER, BELOW

**OR ABOVE NAVIGABLE WATERWAYS**
**August 2, 2004**

## I. INTRODUCTION

The State of Montana holds ownership of the land and minerals located below the low water marks of navigable rivers and lakes as established in the Equal Footing Doctrine. The Department of Natural Resources and Conservation, Trust Land Management Division, administers these lands on behalf of the state.

The DNRC has responsibility for the determination of navigability, river boundaries, island formations, and mineral ownership.

## II. AUTHORITY

The Department's authority to administer the ownership of navigable water bodies are referenced in the following:

(1) Equal Footing Doctrine (1844)
Based on a U.S. Supreme Court decision (Pollard vs. Hagen 44 U.S. 212) the original 13 states held ownership of navigable riverbeds consistent with English Law. The Supreme Court held that all new states enter the union under equal footing. Therefore, all of the state's would own the lands beneath the navigable rivers and lakes.
(2) MCA 70-16-201
Provides for state ownership from the low water mark to the low water mark on navigable water bodies.
(3) MCA 70-1-202
Provides for state ownership of all land below the water of navigable lakes or streams.
(4) MCA 77-1-102
All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake belongs to the State of Montana, for the School Trust.
(5) MCA 70-18-203
Islands and accumulations of land formed in the beds of navigable streams belong to the State of Montana.

## III. GOAL

The goal is to provide for the beneficial use of state lands for public and private purposes in a manner which will provide revenues without harming the long term capability of the land or restricting the original commercial navigability.

## IV. OBJECTIVES

(1) To seek fair market value for the issuance of all easements and licenses.
(2) To issue an easement or license when it can be shown to be in the state's best interest.
(3) To protect riparian areas or the navigable status of these water bodies.
(4) To comply with the provisions of applicable state and federal laws.
(5) To reduce duplicative permitting by DNRC and County Conservation Districts. This policy represents a revision of previous DNRC river licensing policy as it narrows the scope of projects which require DNRC authorization.

## V. DEFINITIONS

Navigable: Any lake or streambed that has had a history of commercial use/navigation.
Ownership: The State of Montana owns the land between the low water marks under the navigable waters, the department administers this ownership.
Water Bodies: Any commercially navigable stream or lake.
Abandoned Bed: A former channel of a navigable stream or lake.
Low Water Mark: The lowest seasonal width of a lake or stream based on a typical flow rate or lowest seasonal mean elevation level.
Land Use License: An agreement that allows a said activity to occur on the bed of navigable lake or stream for a prescribed rental and a term of ten (10) years or less, plus any protective stipulations to regulate such activity.
Easement: An interest acquired in land that entitles the holder of the easement to a specified use or enjoyment. This interest shall remain in force as long as the specified use continues or is maintained.
Fair Market Value: The most current appraised value of a property.
Impact: An action or effect to the bed of a navigable lake or streambed as a result of a proposed activity.
Stipulations: Protective conditions or clauses that mitigate potential impacts to the bed of a navigable lake or stream.
124 Notice: The reference to the Streambed Preservation Act, which requires any state government, county, municipality, or other subdivision of the state to give notice to the Department of Fish, Wildlife and Parks of any project that could alter a natural stream and its

banks.

310 Permit: The reference to the Natural Streambed and Land Preservation Act, which requires (non-government) individuals or organizations to obtain a "310" permit before undertaking a project that would alter or modify a perennial stream.

404 Permit: The reference to the Federal Water Pollution Control Act, which requires the approval of the Army Corps of Engineers, for the removal or placement of dredged or fill materials into waters, wetlands or seas within the United States.

Accumulations: Any formation or collection of sediment that creates a land mass within a navigable lake or stream.

## VI. EASEMENT, LEASE OR LICENSE REQUIREMENTS

The DNRC requires that an easement or license be acquired by the project proponent for the following structures in, over, below or above a navigable waterway.

(1) Dams
(2) Bridges
(3) Utility lines
(4) Pipelines
(5) Drop structures used for irrigation
(6) River channelization projects, including river barbs over 40' in length or greater than 10% of river channel width measured at low water.
(7) All projects where the adjoining land is state owned.
(8) Minerals - a lease must be acquired before mineral exploration or development involving lands under navigable rivers, abandoned channels, and on or under state owned islands.
(9) Projects noticed by the Corps of Engineers 404 permit system which effect the navigability of a waterway. The DNRC will notify the Corp of Engineers and the Project Proponent of easement or license requirements in these instances.

The DNRC will rely on the County Conservation District 310 permitting process to authorize other navigable river projects including but not limited to the following activities:

(1) Rip-rap and bank stabilization projects
(2) Temporary gravel irrigation dams
(3) River barbs under 40' or 10% of channel width
(4) Excavations of less than 10 cubic yards of river bedload accumulation
(5) Tree and debris removal not associated with a timber sale
(6) Repair and maintenance to existing irrigation structures, and irrigation pump sites.
(7) Installation and maintenance of floating irrigation pumps
(8) Private boat ramps, wharves and docks.

Pursuant to §85-16-101, wharves and docks shall extend into navigable waters such a distance only as may be necessary to permit boats to safely land and take on and discharge passengers and cargo. In order to establish an acceptable distance for extension of such wharves and docks into a navigable waterway, the DNRC will determine the annual mean low-water mark of the navigable waterway then measure twice the depth of the draft of the boat(s) to be used. A wharf or dock may proceed that distance into the navigable waterway without charge or permit. Beyond that distance, the DNRC has the discretion to require an easement, lease or license.

Projects not described above will be reviewed on a case by case basis by the appropriate DNRC Area Office to determine whether an easement, lease or license is necessary.

## VII. PROCEDURES

(1) The party requesting a Land Use License or Easement shall submit the appropriate standardized DNRC application and non-refundable application fee, plus the Application Form for Licensing Structures and Improvements on Navigable Water Bodies (DS-432) to the appropriate Area Land Office. This application will require a map showing legal description of project, name of the water body involved, names and locations of adjoining property owners in vicinity of proposed project, type of structure(s) involved, type of materials in the structure, estimated longevity of the project and its associated structures, and a general discussion outlining the need for the project. Easements will require a legal survey completed by a Licensed Land Surveyor or Registered Professional Engineer.

(2) The Area Land Office shall conduct a field investigation if necessary and file the appropriate environmental document to determine the project's impact to state-owned land as well as the impact to the future navigability of the water body. This field investigation shall consider determining impacts to: 1) the water resource (water quality and quantity, fisheries, flora); 2) bank and bed stability; 3) recreational and navigational uses.

(3) If a Land Use License is to be issued, the rental shall be based on a minimum annual payment of $100.00 plus filing fee. The maximum term for licenses will be 10 years but the Department may issue a Land Use License for a shorter duration. At the end of the original 10 year license, the licensee may request renewal of the license for an additional term of up to 10 years. However, the structure must be for the original use and in the original location. The licensee shall contact the Department to request a renewal at least 30 days

prior to the expiration of the license. The department may require payment of additional fees or bonds and impose new stipulations as condition of renewal. The Land Use License shall be completed by the Area Office and forwarded, upon payment of fees and bonds, to the applicant and a copy sent to the Special Use Bureau. Licenses are typically issued for river barbs, removal of bedload accumulation, channelization projects and some diversion structures.

(4) If an easement is to be issued, then the procedures under "Easement Granting Procedures" shall be followed. The Area Office will prepare a report and recommendation on proposed project including construction and/or operating stipulations, bonding, notification of appropriate state and federal agencies, damage fees, other required permits such as 124, 310 or 404, and reclamation. The staff of the Real Estate Management Bureau will evaluate the proposed project and the Area Land Office report an make the final determination as to compensation to the School Trust and set final stipulations. MEPA compliance will be reviewed and augmented as necessary. Easements are typically issued for dams, bridges, pipelines, utility lines, and some diversion structures. In the case of diversion structures, the type of structure, its permanency, effect on navigability, and potential for liability will determine whether a license or easement is issued.

(5) The Area Office will monitor the easement and/or land use license for compliance with construction stipulations. If problems or noncompliance of stipulations are found, then a mitigation plan may be required of the applicant by the Department.

**NAVIGABLE WATER WAYS OWNED BY THE STATE OF MONTANA AND ADMINISTERED BY DNRC**

<u>BIG HOLE RIVER</u>

Based on historical documentation, the Big Hole River is commercially navigable from Steel Creek to Divide, Montana. Therefore, the state claims ownership of the Big Hole River between these two points.

BIG HORN RIVER
Based on historical documentation, the Big Horn River is commercially navigable from the Wyoming state line to its confluence with the Yellowstone River. Therefore, the state claims ownership of the Big Horn River between these two points.

BITTERROOT RIVER
Based on historical documentation, the Bitterroot River is commercially navigable from the confluence of its east and west forks to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Bitterroot River between these two points.

BLACKFOOT RIVER
Based on historical documentation, the Blackfoot River is commercially navigable from Lincoln, Montana to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Blackfoot River between these two points.

BOULDER RIVER (Tributary to the Yellowstone River)
Based on historical documentation, the Boulder River is commercially navigable from the northern township line of Township 6 South, Range 12 East, to its confluence with the Yellowstone River. The west Boulder River is commercially navigable from the southern line of Township 3 South, Range 11 East, to its confluence with the main stem of the Boulder River. Therefore, the state claims ownership of the Boulder River between these points.

BULL RIVER
Based on historical documentation, the Bull River is commercially navigable from a point south of Bull Lake to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Bull River between these two points.

CLARK FORK RIVER
Based on historical documentation, the Clark Fork River is commercially navigable from Deer Lodge, Montana to the Idaho state line. Therefore, the state claims ownership of the Clark Fork River between these two points.

CLEARWATER RIVER
Based on historical documentation, the Clearwater River is commercially navigable from, and including, Seeley Lake, to its confluence with the Blackfoot River. Therefore, the state claims ownership to Seeley Lake and the Clearwater River between these two points.

DEARBORN RIVER
Based on historical documentation and court adjudication, the Dearborn River is commercially navigable from Highway 434 to its confluence with the Missouri River. Therefore, the state claims ownership of the Dearborn River between these two points.

DUPUYER CREEK
See "South Fork Dupuyer Creek".

FLATHEAD RIVER - MAIN STEM
Based on historical documentation, the main stem of the Flathead River is commercially navigable from the confluence of its north and middle forks to its confluence with the Clark Fork River. However, given Neman court case, the state does not claim any river ownership within the boundaries of the Flathead Indian Reservation at this time. Therefore, the state claims ownership of the main stem of the Flathead River from the western boundary of the Flathead Indian Reservation to its confluence with the Clark Fork River.

FLATHEAD RIVER - MIDDLE FORK
Based on historical documentation, the middle fork of the Flathead River is commercially navigable from three (3) miles above Nyack, Montana to its confluence with the North fork of the Flathead River. Therefore, the state claims ownership of the middle fork of the Flathead River between these two points.

FLATHEAD RIVER - NORTH FORK
Based on historical documentation, the north fork of the Flathead River is commercially navigable from Logging Creek to its confluence with the main stem of the Flathead River. Therefore, the state claims ownership of the north fork of the Flathead River between these two points.

FLATHEAD RIVER - SOUTH FORK
Based on historical documentation, the south fork of the Flathead River is commercially navigable from the face of Hungry Horse Dam to the main stem of the Flathead River. Therefore, the state claims ownership of the south fork of the Flathead River between these two points.

FORTINE CREEK (Tributary to Tobacco River)
Based on historical documentation, Fortine Creek is commercially navigable from Swamp Creek to its confluence with the Tobacco River. Therefore, the state claims ownership of Fortine Creek between these two points.

GALLATIN RIVER
Based on historical documentation, the Gallatin River is commercially navigable from Taylor's Fork to Central Park, Montana. Therefore, the state claims ownership of the Gallatin River between these two points.

GRAVES CREEK (Tributary to Tobacco River)
Based on historical information and Departmental interpretation, Graves Creek is commercially navigable from where Graves Creek intersects the eastern township line of Township 35 North, Range 26 West, to its confluence with the Tobacco River. Therefore, the state claims ownership of Graves Creek between these two points.

JEFFERSON RIVER
Based on historical documentation, the Jefferson River is commercially navigable from its confluence of the Beaverhead and Ruby Rivers to the Jefferson's confluence with the Missouri River. Therefore, the state claims ownership of the Jefferson River between these two points.

KOOTENAI RIVER
Based on historical documentation, the Kootenai River is commercially navigable from the Canadian line to the Idaho state line. Therefore, the state claims ownership of the Kootenai River between these two points.

LOLO CREEK
Based on historical documentation, Lolo Creek is commercially navigable from the mouth of Tevis Creek to Lolo Creek's confluence with the Bitterroot River. Therefore, the state claims ownership of Lolo Creek between these two points.

MADISON RIVER
Based on historical documentation, the Madison River is commercially navigable from the confluence of its west fork to Varney, Montana. Therefore, the state claims ownership of the Madison River between these two points.

MARIAS RIVER
Based on historical documentation, the Marias River is commercially navigable from its confluence with the Missouri River to a point five miles upstream. Therefore, the state claims ownership of the Marias River between these two points.

MILK RIVER
Based on historical documentation, the Milk River is commercially navigable from Glasgow to its confluence with the Missouri River. Therefore, the state claims ownership of the Milk River between these two points.

MISSOURI RIVER
Based on historical documentation, the Missouri River is commercially navigable from its headwaters at Three Forks, Montana to the North Dakota state line. Therefore, the state claims ownership of the Missouri River between these two points.

NINE MILE CREEK (Tributary to the Clark Fork River)
Based on historical documentation, Nine Mile Creek is commercially navigable from the southeast corner of Township 17 North, Range 24 West, to its confluence with the Clark Fork River. Therefore, the state claims ownership of Nine Mile Creek between these two points.
ROCK CREEK (Tributary of the Clark's Fork of the Yellowstone River)
Based on historical documentation, Rock Creek is commercially navigable from the main fork of Rock Creek to Red Lodge, Montana. Therefore, the state claims ownership of Rock Creek between these two points.

SHEEP CREEK (Tributary to Smith River)
Based on historical documentation, Sheep Creek is commercially navigable from the mouth of Deadman Creek to its confluence with the Smith River. Therefore, the state claims ownership of Sheep Creek between these two points.

SMITH RIVER
Based on historical documentation, the Smith River is commercially navigable from the mouth of Sheep Creek to its confluence with the Missouri River. Therefore, the state claims ownership of the Smith River between these two points.

SOUTH FORK DUPUYER CREEK (Tributary to Dupuyer Creek and Marias River)
Based on historical documentation, the south fork of Dupuyer Creek is commercially navigable from the basins above the canyon to the

mouth of the canyon, a distance of approximately eight miles. Therefore, the state claims ownership of the south fork of Dupuyer Creek between these two points.

STILLWATER RIVER
Based on historical documentation, the Stillwater River is commercially navigable from upper Stillwater Lake to its confluence with the Flathead River. Therefore, the state claims ownership of the Stillwater River between these two points.

SUN RIVER
Based on historical documentation, the Sun River is commercially navigable from the confluence of the north and south forks of the Sun River to its confluence with the Missouri River. Therefore, the state claims ownership of the Sun River between these two points.

SWAN RIVER
Based on historical documentation, the Swan River is commercially navigable from and including Swan Lake to its confluence with Flathead Lake. Therefore, the state claims ownership of the Swan River between these two points.

TETON RIVER
Based on historical documentation, the Teton River is commercially navigable from the confluence of its north fork to its confluence with the Marias River. Therefore, the state claims ownership of the Teton River between these two points.

TOBACCO RIVER
Based on historical documentation, the Tobacco River is commercially navigable from the mouth of Graves Creek to its confluence with the Kootenai River. Therefore, the state claims ownership of the Tobacco River between these two points.

TONGUE RIVER
Based on historical documentation, the Tongue River is commercially navigable from the south line of Township 2 South, Range 44 East to its confluence with the Yellowstone River. Therefore, the state claims ownership of the Tongue River between these two points.

WHITEFISH RIVER
Based on historical documentation, the Whitefish River is commercially navigable from, and including, Whitefish Lake to its confluence with the Stillwater River. Therefore, the state claims ownership of the Whitefish River between these two points.

YAAK RIVER
Based on historical documentation, the Yaak River is commercially navigable from the mouth of Fourth of July Creek to its confluence with the Kootenai River. Therefore, the state claims ownership of the Yaak River.

YELLOWSTONE RIVER
Based on historical documentation, the Yellowstone River is commercially navigable from Emigrant Gulch at Emigrant, Montana to the North Dakota state line. Therefore, the state claims ownership of the Yellowstone River between these two points.

**PROCEDURES FOR GRANTING LAND BREAKING**
**ON STATE TRUST LANDS**
**May 24, 1993**

## I. AUTHORITY

The authority for the Department to grant a lessee of state lands the right to cultivate such lands is contained in § 77-6-209, MCA and 26.3.136, ARM. A lessee that desires to cultivate any part of the land they hold under lease shall make written application to the Department. The request shall include a map showing acreage location, Section, Township, Range, Lease Number and County.

Reclassification from Class I (grazing) to Class 3 (agriculture) requires completion of a capability inventory pursuant to § 77-1-403, MCA. The capability inventory shall be made prior to reclassification and shall include information on the following:

(1) Soils Capability
(2) Vegetation
(3) Wildlife Use
(4) Mineral Characteristics
(5) Public Use
(6) Aesthetic Values
(7) Cultural Values
(8) Surrounding Land Use
(9) Any other resources, zoning or planning information related to the classification.

**Additional Information that should be included:**

(1) Soils data, topographic and aerial map
(2) Written response from MT Department of Fish, Wildlife & Parks, Soil Conservation Service and/or Conservation District
(3) Appropriate MEPA Document
(4) Area Land or Unit Office special stipulations
(5) Area Land or Unit Office recommendations
(6) Recreational Use or Potential

## II. GOALS

It is the goal of the Department to allow the tillage of state lands for agricultural purposes using acceptable tillage methods, conservation practices and specified criteria in order to generate the greatest income to the Trust and to protect the long term productivity of the trust resources.

## III. OBJECTIVES

To review all applications for breaking requests of state land in a systematic manner.

To remain in compliance with current and future Farm Bill policies that will provide for the greatest protection of the land resources and sustaining the greatest yield to the lessee and the Trust.

To evaluate the conditions on the state lands being considered for agricultural crops based on the highest and best use.

## IV. PROCEDURES

All break requests for native sod on state land shall be submitted to the Department in writing and shall outline the proposed action. Only Land Capability Class III or better will be considered for breaking on native sod. In general, small suitable areas scattered throughout a section of rangeland will not qualify for agricultural classification. However, small areas of suitable land may be broken if a more workable field with adjacent lands is the result. These situations must be handled on a case by case basis.

For dryland farming methods, the following requirements for breaking must be met:

(1) The soils must be 20 inches or more in depth over shale, and bedrock.
(2) The slopes must not be greater than 8%.
(3) The soil texture should be loams through light clay.
(4) There should not be over 35% coarse fragments throughout the soil profile.
(5) The water table must be at least 30 inches below the surface during the growing season.
(6) Saline or alkali conditions must be no more than slight as determined through soil testing and as suggested by soil surface conditions.
(7) There must be no known saline seep potential, nor any potential to be a recharge area above an area showing signs of salinity.
(8) Annual precipitation must be at least 10 inches per year.
(9) The soils must not be subject to flooding or surface ponding during the regular growing season.

(10) Soils having the potential for extreme wind or water erosion shall not be broken even though the soil is Capability Class III.
(11) Drainage areas must always be maintained in permanent grass waterways or by acceptable conservation practices.

**For irrigation farming methods, the following requirements for breaking must be met:**

(1) Soil textures must be loams through clay of less than 50% clay fraction.
(2) The available water holding capacity of the soil is three inches or more, within the first 24 inches of the soil profile.
(3) There should not be over 35% coarse fragments throughout the profile.

(4) The slopes must not be greater than 8% on sprinkler irrigation systems and 4% on flood irrigation systems.
(5) The soils must be at least six feet in depth over shale or bedrock and must have drainage potential.
(6) The water table must be at least 40 inches below the surface during the growing season.
(7) Saline or alkali conditions must be no more than slight with good drainage and adequate, suitable irrigation water must be available.
(8) There must be no known saline seep potential nor any potential to be a recharge area above an area showing signs of salinity.
(9) The soils must not be subject to flooding or surface ponding during the regular growing season.

**All State Lands Other Than Native Sod**

For lands other than native sod, breaking will require them to be a Capability Class III or better and the criteria outlined under native sod must be met. Those lands with Capability Class IV could be reviewed and accepted, only if meeting the following criteria:

**For dryland farming methods, the following requirements for breaking must be met:**

(1) The soils must be 60 inches or more in depth over shale, and bedrock.
(2) The slopes must not be greater than 8%.
(3) The soil texture should be loams through clay.
(4) There should not be over 35% coarse fragments throughout the soil profile.
(5) Soils must have a soil loss tolerance (T) factor of 5 tons/acres/year.
(6) Tillage of the soils must be done in such a manner that the combined wind and water erosion have a soil loss tolerance (T) factor not greater than 5 tons/acre/year.
(7) Soils must have a Wind Erodibility Group (WEG) value not less than 4.
(8) Soils must be capable of producing greater than 20 bushels per acre spring wheat as determined by SCS land capability classes and yield per acre of crops and pasture data.
(9) The water table must be at least 20 inches below the surface during the growing season.
(10) Saline or alkali conditions must be no more than slight as determined through soil testing and as suggested by soil surface conditions.
(11) There must be no known saline seep potential, nor any potential to be a recharge area above an area showing signs of salinity.
(12) Annual precipitation must be at least 10 inches per year.
(13) The soils must not be subject to flooding or surface ponding during the regular growing season.
(14) Drainage areas must always be maintained in permanent grass waterways or by acceptable conservation practices.

**For irrigation farming methods, the following requirements for breaking must be met:**

(1) Soil textures must be loams through clay of less than 50% clay fraction.
(2) The available water holding capacity of the soil is three inches or more, within the first 24 inches of the soil profile.
(3) There should not be over 35% coarse fragments throughout the profile.
(4) The slopes must not be greater than 8% on sprinkler irrigation systems and 4% on flood irrigation systems.
(5) The soils must be at least six feet in depth over shale or bedrock and must have drainage potential.
(6) The water table must be at least 40 inches below the surface during the growing season.
(7) Saline or alkali conditions must be no more than slight with good drainage and adequate, suitable irrigation water must be available.
(8) There must be no known saline seep potential nor any potential to be a recharge area above an area showing signs of salinity.
(9) The soils must not be subject to flooding or surface ponding during the regular growing season.

If the place of use for the irrigation water is located on state lands, the water right must be filed in the name of the state. Special considerations should be noted on the lease if the source of water is not located on state lands.

**Department Review**

All break requests, whether submitted to the main office in Helena or the Area Land Office, shall be initially addressed by the Area Land Office in which the lease is located. All land breaking requests must be evaluated by an on-the-ground inspection to assure that the best interests of the Trust are being served.

Upon receipt of the land breaking request, the Area Land Office shall contact the appropriate Conservation District or SCS office for any input that may be required or useful. Data such as maps, aerial photographs, range evaluations, soils information and other pertinent data should be reviewed before completing the land breaking proposal. Other appropriate agencies, including the Department of Fish, Wildlife and Parks, shall be contacted requesting a written response of any concerns regarding the land breaking request. The appropriateness of all comments shall be evaluated and considered before the request to break the land is approved. If the request for breaking the land is obviously not in the best interests of the Trust and/or if the land is not suitable for agricultural purposes at the initial on-the-ground inspection, the lessee shall be notified by the Area Land Office that the request is denied. A copy of the notification shall be sent to the Surface Management Bureau. If the Area Land Office does not notify the lessee, the notification will be by the Surface Management Bureau.

If the initial review indicates that the land may be suitable for agricultural purposes, the Area Land Office shall develop a land breaking proposal. The Area Land Office will submit the land breaking proposal, including their recommendations and the documentation required in the Break Request/Range Renovation check-off sheet, to the Surface Management Bureau.

The Surface Management Bureau shall analyze the proposed breaking request and consult with the Area Land Office over any concerns, or information deficiencies. If, after consultation with the Area Land Office, the Surface Management Bureau determines the breaking should be denied, the Surface Management Bureau shall make that recommendation to the Lands Division Administrator. If the Lands Division Administrator agrees with the recommendation of the Surface Management Bureau, then the Surface Management Bureau shall contact the lessee, in writing, denying the request to break state lands.

If, after consultation with the Area Office, the Surface Management Bureau recommends approval of the breaking request, it will address any concerns and propose any additional stipulations to meet the requirements of the Montana Environmental Policy Act (MEPA) and the Montana Antiquities Act.

The Surface Management Bureau will make the final recommendation for reclassification and request to break to the Lands Division Administrator. If the Lands Division Administrator agrees with the recommendation of the Surface Management Bureau, the Surface Management Bureau will contact the lessee granting approval to break state lands, along with any Supplemental Lease Agreement (SLA). The Area Land Office shall monitor the tract to assure that recommendations and stipulations attached under a Supplemental Lease Agreement are carried out as intended.

## PROCEDURE FOR ISSUANCE OF PIPELINE AND UTILITY FACILITY CONSTRUCTION LICENSES AND EASEMENTS
**June 19, 1995**

### I. Purpose

Because of the time necessary to prepare an application for and receive the Board of Land Commissioners' approval of an application for an easement for certain facilities on state lands, the Board of Land Commissioners has established the following procedure in order to allow the Commissioner of State Lands to approve construction of these facilities before an easement is obtained from the Board. This procedure is intended to be used only when deemed necessary to meet critical needs or in an emergency.

## II. Scope

This procedure applies to the installation and construction of buried pipelines, buried and overhead electrical and communications cables and lines, and appurtenant facilities, such as transformer stations and booster stations, to be installed on or over any lands administered by the Department of State Lands. These lands include state trust lands, the beds of navigable steams and lakes between lowwater marks, lands owned by the state and administered by the Departments of Corrections and Human Services (except for lands used as campus grounds), Military Affairs, Family Services, and Natural Resources and Conservation.

## III. Procedure

**(A) Application.** To initiate the process of-obtaining a construction license, the applicant shall:

(1) submit an application to the appropriate Department of State Lands Area Office that contains:

(a) non-refundable application fee for processing of the license;

(b) a legal description to the quarter/quarter section of land on which the facility is located;

(c) an aerial photo or USGS photographic quad map showing the approximate centerline of the facility applied for;

(d) design and construction plans, including the length and width of the corridor applied for up to a maximum of 100 feet in width (50 feet on each side);

(e) proposed construction schedule;

(f) a statement of the need to cross state land;

(g) a cultural resource survey and a paleontological survey conducted by a surveyor approved by the Department, unless waived by the Department; and a statement of the reasons that the applicant should not be required to delay site preparation or construction until easement can be obtained from the Board; evidence of a settlement between the applicant and any surface lessee regarding damages to the lessee's improvements (DSL form DS-457); and

Incomplete applications will be returned to the applicant. Processing will not begin until a complete application is received by the Area office.

(2) stake the anticipated centerline of the proposed corridor (this requires lessee permission or special use license from the Department).

**(B) Review of Application.** Upon receipt of an application, the Department shall:

(1) conduct a field evaluation of the proposed 100 foot wide corridor;

(2) review the cultural and paleontological resource surveys and assure compliance with the Montana Antiquities Act;

(3) conduct an environmental review of the proposed corridor pursuant to the Montana Environmental Policy Act; and

(4) based on the above evaluations, make a management land use decision as to the advisability of issuing a construction permit and easement

(5) forward the complete application, along with the environmental review and recommendations to the Lands Division Surface Management Bureau for completion of processing. Field information shall indicate current land uses and surrounding area influences, if any. Applications for classified forest lands are to be forwarded to the Forest Management Bureau for review and then forwarded to the Lands Division Surface Management Bureau for finalization.

**(C) Issuance of License**. If, after the review conducted pursuant to B., the Commissioner determines that issuance of the construction permit and easement would not result in significant environmental impact, would not violate the Montana Antiquities Act or any other state or federal law or rule, is in the best interests of the trust, and does not involve substantial controversy, the Department shall notify the applicant that, upon payment of the construction license fee the Department will issue a construction license that contains the provisions described in 2. below and any other provisions the Department deems necessary. Should the Commissioner determine that issuance of the construction license may not be issued under these criteria, the Department's Lands Division Surface Management Bureau shall advise the applicant that a construction license will not be issued but that the applicant may apply to the Board for an easement.

(1) A construction license must:

(a) authorize construction of the linear facility;

(b) contain all restrictions, conditions, and requirements the Department imposes on the construction; contain an agreement by the applicant to apply for an easement for the facility within 120 days of the issuance of the license and any extension granted by the Department, and pay any easement fee imposed by the Board; contain an agreement by the applicant that if the easement is not applied for within the time limits, or if it is applied for and the Board refuses to grant it, the applicant will:

(1) reclaim the land by removing surface facilities and, at the discretion of the Department, underground facilities;

(2) re-grade, topsoil, and establish vegetation of equal stability and utility to that existing prior to the construction on all disturbed areas. All areas that contained predominantly native species prior to construction shall be reseeded and revegetated to contain predominantly native species;

(e) contain a provision that, if the applicant does not reclaim the land in accordance with (d) above, the applicant shall pay to the Department an amount determined by the Department to be necessary for it to conduct the reclamation of the site; and

(f) provide that, should the costs of reclamation be less than the amount advanced by the applicant pursuant to

(e) above, the Department shall return the overage to the applicant.

(3) The fees assessed for this type of license should be in accordance with the following schedule:

GRAZING: First 0-1 mile = $125, plus $25 for every ¼ mile, or portion thereafter
GRAZING w/influence: First 0-1 mile = $175, plus $40 for every ¼ mile, or portion thereafter
CROPLAND: First 0-1 mile = $250, plus $50 for every ¼ mile, or portion thereafter
CROPLAND w/influence: First 0-1 mile = $300, plus $65 for every ¼ mile, or portion thereafter
Residential Land (Rural): First .0-1 mile = $360, plus $85 for every ¼ mile, or portion thereafter
Residential Land (Urban): First 0-1 mile = $425, plus $100 for every ¼ mile, or portion thereafter
Commercial/Industrial (Rural):First 0-1 mile = $400, plus $100 for every ¼ mile, or portion thereafter
Commercial/Industrial (Urban):First 0-1 mile = $475, plus $100 for every ¼ mile, or portion thereafter
TIMBERLAND: First 0-1 mile = $600, plus $100 for every h mile, or portion thereafter
TIMBERLAND w/influence: First 0-1 mile = $800, plus $100 for every ¼ mile, or portion thereafter
NAVIGABLE WATERS: First 0-1 mile = $100, plus $50 for every ¼ mile, or portion thereafter

**(D) Easement Application.** The applicant must submit an application for an easement for the facility within 120 days of the issuance of the construction license or that facility. Said application shall be submitted to the appropriate Area Office. Upon receipt of a written request from the applicant, the Department may grant extensions of this time not exceeding 60 days cumulatively. In addition, the Department may grant additional extensions if construction of the facility is delayed because of situations beyond the control of the applicant, such as inclement weather.

(1) The application must:

(a) be submitted on a form approved by the Department;

(b) contain the non-refundable application fee; and

(c) contain a plat and description of the centerline as built in accordance with the following requirements:

(i) An original and one copy (or two copies) of the most current USGS 7.5 Minute Quad map with the easement platted thereon.

(ii) An exact geographical survey is not required. The description of centerline of the right of way is required. The description of a found established monument within a filed corner recordation form, certificate of survey or subdivision plat is required. In the event a previously established monument cannot be located, one must be legally established and recorded prior to application being made for right of way.

Incomplete applications will not be accepted and will be returned to the applicant. Processing will not begin until a complete application is received by the Area Office.

**(E) Processing of Easement Application**. Upon receipt of a complete application, the Area Office shall immediately notify the Lands Division that said application has been received. The Area Office will then review the easement for compliance with all conditions of the construction license and then forward the complete application, along with any comments or recommendations to the Lands Division Surface Management Bureau for completion of processing. Applications for classified forest lands are to be forwarded to the Forest Management Bureau for review and then forwarded to the Lands Division Surface management Bureau for finalization. The easement application shall be processed and brought before the Board under the existing procedure for review and issuance of easements. The Department shall advise the Board that a construction license has been issued.

**(F) Effect of Non Compliance by Applicant or Licensee**. If an applicant for license fails to pay for the license; fails to apply for an easement within 120 days of the issuance of the construction license (whether or not an extension of the 120 day deadline is granted); fails to pay for an easement within 60 days of receipt of billing; or fails, upon notice that the Board has refused to grant an easement to remove the facility and reclaim

**PROCEDURES FOR REVIEW**
**OF STATE CRP LAND**
**February 18, 1997**

## I. Authority

The powers and duties of the Board of Land Commissioners to manage state trust lands are contained in ' 77-1-202, Montana Code Annotated (MCA). The authority of the Department of Natural Resources & Conservation (DNRC) to manage these lands under general direction of the Board is contained in ' 77-1-301, MCA.

Beginning in 1986, lessees of state land could make application to bid qualifying state tracts into the Conservation Reserve Program (CRP). To date, Nearly 140,000 acres of state land have been enrolled into this program.

It is the policy of the Land Board that any lands bid into CRP under the 15th and subsequent sign-up periods, shall be at a rate in which the state receives no less than or a minimum of 50% of the payment (not including the stand maintenance fee). The lessee shall receive any maintenance fee paid under the program. All CRP acreage will remain classified as agriculture throughout the term of the CRP contract. If the lands are not re-bid into CRP, the acreage will be reclassified to grazing. The lessee may apply to break the acres formerly contained in the CRP contract, however, the request must be reviewed under the Department's current break policy.

## II. Goal

It is the goal of the department to manage state lands with expiring CRP contracts in a manner consistent with ' 77-1-202 and 77-1-203, MCA. In doing so, the Department must consider the long term productivity of the resource and the potential return to the trusts.

## III. Objectives

(A) Inventory and maintain a listing/data base of all existing CRP contracts.
(B) Adopt and implement a uniform AUM rating for those lands which will be classified as grazing.
(C) Contact lessees prior to contract expiration date to determine their desired intention of the CRP acreage at contract expiration.
(D)Review requests by those lessees who wish to break acreage in CRP lands.
(E)Allocate Resource Development funds when available, when lessee requests assistance in development of improvements for those acreages which will be classified as grazing.

## IV. Procedures

Prior to expiration of the CRP contract, Area or Unit staff shall contact the lessee to notify them of the Department's CRP policy and inquire as to their intentions with the lands. In evaluating future management of lands with expiring contracts, Department staff must consider existing competitive bid rates if any, crop acreage bases, early out options, productivity of the lands, and any other factors which influence revenue to the trusts and long term protection of the resource.

**LESSEE REQUESTS TO REBID INTO CRP**

If the lessee requests to rebid the lands into CRP, the Area or Unit Office shall assist the lessee to determine the most appropriate rate to offer when bidding, or other practices which might enhance the acceptance of the offer.

**LESSEE REQUESTS TO BREAK**

If the lessee wishes to break the CRP acres, the Area or Unit Offices will review the tract(s) and provide a recommendation to the Agriculture & Grazing Management Bureau (AGMB). The recommendation to allow tillage of CRP acres will be based on the existing Department Breaking Policy. Included should be any conservation practices that the Area and Unit Offices feels should be required as a part of the breaking process. Their recommendations will be incorporated into a Supplemental Lease Agreement (SLA) and made a part of the current lease. A Lease Record Change will be submitted to the AGMB from the Area or Unit Office. The rental for those acres will be at the competitive bid rate for the lease, or at the minimum rate in effect at that time if the lease was not competitively bid.

If a break request is denied, the Area Office will contact the lessee as such. A determination should then be made as to whether the tract will be utilized as grazing or hayland. Which ever is applicable, the Area Office will follow the procedures for hayland or grazing outlined below.

**LESSEE REQUESTS AS HAYLAND**

If a lessee intends to harvest hay from CRP acres, the Area or Unit Offices will evaluate those lands as to their capability for sustained hay production and reclassify to agriculture. AUM'S will be assigned, in which the lessee also intends to use for livestock grazing. Lease Record Change Sheets will be submitted to AGMB from Area Land or Unit Office. The rental for those acres will be at the competitive bid rate for the lease, or at the minimum rate in effect at that time if the lease was not competitively bid.

**LESSEE REQUESTS AS GRAZING**

If the lessee desires and the Department concurs the best use of the land is as grazing, a carrying capacity shall be established. The Area or Unit Office may use a standard AUM carrying capacity for any tracts that will not receive on ground review due to time and budget constraints. The standard carrying capacity will be .5 -.7 AUM/acre in 15"-19" precipitation zone and .35 -.4 AUM/acre in 10"-14" precipitation zone. For those tracts in which field reviews are completed, the Land Use Specialist will set the carrying capacity. When deemed appropriate, "Hay When Cut" should be assigned to the grazing acres. Lease Record Change sheets will be submitted to the AGMB for all CRP acres in the year that they expire. Those changes will become effective the year following CRP contract expiration date. A Lease Record Change is not necessary if the contract expires the same year as lease renewal. In those cases, the information from the Field Evaluation Form will be used.

The rental for these acres will be at the competitive bid rate for the lease, or at the minimum rate in effect at that time if the lease was not competitively bid.

**ROAD USE POLICY**
**July 29, 2002**

The intent of this policy is to clarify and recognize the variety of uses for which road easements are granted across state trust lands.

Pursuant to §77-2-101, the Department may accept applications for easements for all uses enumerated in that statute and in §70-30-102.

Included within these statutes is the ability to grant easements for public and private roads.

Further, pursuant to §77-1-130, the Department may accept applications for easements for public and private roads constructed prior to 1997 from county and state government and any person utilizing such roads to access private lands. If approved by the State Board of Land Commissioners, the Department shall issue an easement recognizing use of the road for all purposes consistent with its historic use.

It is therefore the policy of the Department that the following purposes for which road easements are granted shall be construed as granting the described rights therein:

**Private Access for Residential Purposes – Non-Historic:**
Any such easement properly applied for and granted by the State Board of Land Commissioners shall allow access to the applicable number of residences or vacant residential lots as applied for, including all garages, sheds, barns or other associated outbuildings for a limited term not to exceed 30 years from date of issuance of the easement document pursuant to the Private Driveway Policy adopted by the State Board of Land Commissioners on June 19, 1995. Use of the road for other purposes, such as recreational purposes (e.g. hunting, fishing, outfitting1), routine maintenance and property management (including the ability to clear and/or thin timber and other natural fuels to create defensible space) is also implied. The ability to travel upon the road across state land is extended to the applicant's invitees and guests**,** but only to the extent of allowing ingress and egress across state land for the purpose of accessing applicant's private lands. Use of any portion of the road on State land for any purpose other than ingress/egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provisions of ARM 36.25.149 and authorization by the Department. Any unauthorized use of the road on State land by the applicant and/or their invitees and guests may result in mitigative actions being taken by the Department as deemed necessary. Maintenance for the road across state land will be the responsibility of the applicant proportionate to their share of the use of the road.

**Private Access for Farm/Ranch, Timber Resource Management and Land Management Purposes – Non-Historic:**
An applicant may apply for an easement to access their private lands for the purposes of conducting normal farming and ranching operations. Said use shall be consistent with practices relating to farming and ranching, including movement of all equipment, machinery and livestock. Use of the road for other purposes, such as recreational purposes (e.g. hunting, fishing, outfitting1) and clearing and/or thinning of timber or other natural fuels for fire hazard reduction purposes upon applicant's private land is also implied. The ability to travel upon the road across state land is extended to applicant's invitees and guests, but only to the extent of allowing ingress and egress across state land for the purpose of accessing applicant's private lands. Use of any portion of the road on State land for any purpose other than ingress/egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provisions of ARM 36.25.149 and authorization by the Department. Any unauthorized use of the road on State land by the applicant and/or their invitees and guests may result in mitigative actions being taken by the Department as deemed necessary. Maintenance for the road across state land will be the responsibility of the applicant proportionate to their share of the use of the road.

**Private Access Under Historic Right of Way Law:**
A person may apply for a historic access easement across state land to access their private lands so long as the road was in place prior to 1997. Applicant may only apply for access to their private lands for the use that historically existed up to the year 1997. If the use of the private lands changed since 1997 (e.g. farm land in 1997, subdivided into residential development in 1998), applicant does not qualify for historic road easement. Easements may be granted for the purpose of accessing private lands for farm and ranch purposes, existing subdivisions and residential purposes, timber resource and land management. If granted by the State Board of Land Commissioners, the Department shall issue a permanent, perpetual easement to the applicant. Use of the road for other purposes, such as recreational purposes (e.g. hunting, fishing, outfitting1), routine maintenance and property management (including the ability to clear and/or thin timber to create defensible space or for fire hazard reduction purposes) upon applicant's private land is also implied. The ability to travel upon the road across state land is extended to applicant's invitees and guests, but only to the extent of allowing ingress and egress across state land for the purpose of accessing applicant's private lands. Use of any portion of the road on State land for any purpose other than ingress/egress as stated herein, including use in conjunction with recreational activities conducted on state land, is subject to the provisions of ARM 36.25.149 and authorization by the Department. Any unauthorized use of the road on State land by the applicant and/or their invitees and guests may result in mitigative actions being taken by the Department as deemed necessary. Maintenance for the road across state land will be the responsibility of the applicant proportionate to their share of the use of the road.

**RECIPROCAL ACCESS/EASEMENT EXCHANGES:**
Pursuant to §77-1-617 the Department may negotiate reciprocal access agreements to access isolated parcels of state trust land. The Department's authority to conduct land exchanges is found in §77-2-201 through §77-2-203. To further the Department's objective in obtaining access to both fully isolated tracts and those tracts which may already have access to a portion of the tract, procedures for the development of both reciprocal and easement exchange proposals have been adopted.

1 For discussion on outfitting, see Page 4

In certain situations, it is desirable to acquire 60-foot right of way widths with cooperators. More specifically, wherein a road serves as a collector road; a road segment will connect to other roads established at 60-foot widths; a road has multiple lateral roads; the topography is such that a road can be constructed to maintain a 9-11% grade; a road has looped connection to an alternate egress/ingress location; a road has potential for high traffic volume based on potential use (resort, restaurant, subdivision, etc.).

Circumstances wherein a 60-foot right of way width may not be necessary may include a dead-end road segment with limited access to favorable topography for future development; limited potential for extension or connection to another road segment; topography too steep to maintain acceptable road grade standards; failure to qualify as an alternate emergency ingress/egress route; other environmental limitations and constraints.

It is the policy of the Department to negotiate 60-foot easements and secure rights to access land for all lawful purposes when applicable. It is not in the Departments or trust beneficiaries interest to secure fewer rights than rights granted to reduce the cost of the easement. Unrestricted legal access benefits all resource management opportunities.

Recognizing that access rights for the public to recreate on state trust lands is an issue, the Department shall, whenever possible and consistent with fiduciary responsibilities, secure access rights for the public when negotiating reciprocal access and easement exchanges. While motorized access is preferable, the Department would be willing to accept access by non-motorized means (e.g. walk-in, horseback). As part of the Reciprocal Access/Easement Exchange Agreement, public access shall be specifically addressed.

**ROAD ACCESS VALUATION:**

All access easements issued across state trust lands shall be valued at the underlying land value. Road and road value improvements should be considered as deemed appropriate by the area office. Compensation should not be tied to potential profits or revenue streams associated with use and potential activities on private lands. Whenever possible, the Department will make use of the previously established fee schedules to establish easement compensation. When necessary, an appraisal of the state lands may be requested through the Special Uses Bureau Right of Way Manager.

**ASSIGNMENTS OF ROAD EASEMENTS:**

Easements issued for access across state trust lands are assignable to other parties so long as the terms and conditions of the easement have been met and there are no outstanding issues in regards to reclamation, maintenance, etc. The party assuming the easement becomes obligated for performance of the terms and conditions of the easement. The assignment allows the assigned party to enjoy use of the road for the uses specified in the original easement grant.

**RECREATIONAL USE (OUTFITTING):**

In Weitz v. DNRC the Supreme Court found that the recreational use statutes and rules were not intended to restrict or address lessee's use of their leased lands when not recreating nor was it intended to restrict their use of their adjacent private land. Furthermore, the Court found that the Legislature notably distinguished lessees of State lands as a separate class from the public. The Court concluded that "application of the rule prohibiting vehicle travel across State lands when applied to a lessee traveling by existing roadways to conduct activity elsewhere is an overbroad and unlawful application of the regulations and is unenforceable.". In their summary statement the Court stated that traversing leased State lands in order to conduct outfitting on private lands of the lessee does not constitute outfitting on State land.

Based on this decision, the Department has determined that, in addition to lessees, the aforementioned use will also be applicable to legal holders of easements across State lands. DNRC authorizes outfitting on State Trust lands under a Special Recreational Use License for Outfitting (SRUL). If use of the road on State land will be in conjunction with recreational activities conducted under authorization of a SRUL, such use is subject to the terms and conditions in the SRUL and authorization shall be at the discretion of the Department's Area Managers, however, such authorization shall not be unreasonably withheld. Road use should be authorized under the following conditions:

(1) Limited or no public conflict because public access to affected tracts is restricted by private ownership (Note: In compliance with current policy, if the tract is legally accessible and public use of the road is restricted/prohibited, use should not be authorized to individuals, including outfitters)
(2) Road does not intersect or link any other public or designated roads in the area
(3) No imminent threat of adverse environmental impacts or resource damage
(4) Consistent with fiduciary responsibilities, just compensation is obtained for the right conveyed

**UTILITY EXTENSION POLICY**

The extension of utilities to an authorized improvement on state land may be authorized under DS 405, Improvements Request From, subject to the following conditions:

(1) The utility line must service only the improvement located on state land. There may be no extension of the utility off state land to other ownership.
(2) Placement of the utility line must be approved by the land office prior to installation.
(3) The utility line must service an improvement that has been authorized by the land office.

(4) The cost of the extension of utility service may be claimed as an improvement. Attach a copy of the installation bill as documentation of the cost of utility extension. The value of utility line itself may not be claimed as an improvement.

(5) Both the lessee and the utility company must sign DS 405, Improvements Request Form. The Improvements Request Form will authorize maintenance of the utility line by the lessee or utility company.

(6) Authorization of the utility line as an improvement to the state lease is voluntary on the behalf of the lessee and the utility company. Right of way easements and land use licenses remain options for authorization of utility line extension to state improvements.

**TRAPPING ON STATE LAND**
**August 9, 2001**
**Revised May 18, 2005**

**Authority**

The authority for the Department to authorize trapping on state land is contained in 77-1-101 and 77-1-804, MCA, as well as in 36.25.162, ARM. The statutes collectively authorize the Land Board to adopt and implement rules providing for and requiring issuance of a Special

Recreational Use License for commercial or concentrated recreational use or for other recreational activities that are not within the definition of general recreational use. Trapping is an activity specifically excepted as being included within the definition of "general recreational use" under 36.25.145, ARM.

**Policy and Procedures**

***Application and Licensing Requirements***

Prior to trapping furbearers, non-game wildlife, or predators on state land, regardless of whether such use is commercial or non-commercial in nature, all persons* 12 years of age and older must obtain a ***Special Recreational Use License for Trapping (Form DSRU3T)***, hereinafter "SRULT" from DNRC. All requests for trapping on state land must be submitted to DNRC using an ***Application for Special Recreational Use Licensing for Trapping (Form DS-RU3TA)***, hereinafter "RU3TA". (*Exception: an SRULT is not required for trapping of non-game wildlife and predators conducted by a state land surface lessee/licensee or their designated agent, or by an agent of the USDA-APHIS, provided such trapping is necessary for leasehold management purposes). DNRC shall have discretionary authority to grant or deny licensing of any parcel(s) or to impose or modify any term/condition in an SRULT as may be necessary to prevent inhibiting or jeopardizing other existing or proposed activities on the affected parcel(s) or that may otherwise be deemed not to be in the best interest of the trust.

Licensing Prerequisites/Fees

Prior to obtaining an SRULT for trapping furbearers during any period in which an **agreement exists** between DNRC and the Dept. of Fish, Wildlife & Parks (DFWP) pursuant to 77-1-815, MCA, all persons must possess a current Montana Conservation License, which is available from DFWP. Persons desiring to trap only non-game wildlife or predators during such agreement period may possess either a Conservation License or State Land Recreational License, which is also available from DFWP, prior to obtaining an SRULT. During such period, there shall be no additional fees assessed by DNRC for issuance of an SRULT.

During any period in which an **agreement does not exist** between DNRC and DFWP pursuant to 77-1-815, MCA, all persons on state land must obtain only an SRULT from DNRC. During such periods, the following fee schedule shall apply:

(1) Single/Non-Blocked tracts: the minimum annual rental shall be $50, which will cover a maximum of ten (10) tracts. Rental for additional tracts, as may be authorized by DNRC, shall increase in $50 increments for each five (5) tracts or portions thereof.

(2) Blocked tracts/State Forests: A minimum annual rental of $250 is required for trapping on State Forests or on other areas wherein the tracts are blocked (located contiguous to each other) and the total number of licensed tracts will exceed thirty (30). If the number of tracts in the block is less than 30, the single tract rate will apply.

SRULT Application Requirements

Unless otherwise approved by DNRC (ex: trapping requested on tracts in overlapping DNRC jurisdictional boundaries), a separate RU3TA must be submitted to and SRULT obtained from each DNRC office having jurisdiction of the area(s) in which trapping is requested. There is no application fee for the RU3TA. Submittal of RU3TA's will be accepted beginning on March 1st of the year in which trapping is requested. **The deadline for RU3TA submittal is September 30th and those received after that date will not be considered during that license season.**

***Lessee Notification of Application***

Per provisions of ARM 36.25.162, **prior to issuance of an SRULT, DNRC must notify the lessee(s) of the proposal**. To accommodate this requirement, DNRC has developed a form letter (see sample attached at the end of this policy) that can be used to provide this notification. The letter may either be mailed to the lessee(s) or given to the applicant with instruction that they obtain the lessee(s) signature on it and return it to DNRC. In the event the lessee is unable or unwilling to sign it, DNRC shall then mail it to the affected lessee to provide proof of service. *Note: if an SRUL is renewed to an existing licensee under the same terms and conditions as those contained in the existing SRULT, re-notification of application at renewal is not required.*

***License Issuance/General Provisions***

(1) SRULT's are to be issued on a first-come first-served basis with the date of DNRC's receipt of the RU3TA being used to determine priority. No preference right for SRULT renewal shall be given to an existing licensee at renewal;

(2) the term/duration of an SRULT may not exceed one (1) year;

(3) on leased/scattered (non-blocked) tracts, SRULT's are to be exclusive in nature wherein only one SRULT may be authorized per tract. On unleased and/or blocked tracts, DNRC has discretionary authority to authorize non-exclusive trapping through issuance of more than one SRULT per tract/are. In either case, more than one entity may be included in an SRULT;

(4) on leased/scattered (non-blocked) tracts, it is recommended that no more than ten (10) tracts be authorized under an SRULT.

On unleased and/or blocked tracts, there is no official limitation; however, consideration should be given to the size of the block and corresponding limitations based on geographic or leasehold boundaries (i.e. roads, rivers, fencing, etc.);

(5) use of motorized vehicles in conjunction with trapping shall only be allowed on public roads, roads that DNRC may designate open, or other roads as may be specifically authorized in the SRULT. The following guidelines are to be used when considering or granting vehicle use on non-public or non-designated roads:

(a) Road use should be prohibited under wet conditions and should only be allowed on existing roads or two-track trails (wherein tract is devoid of vegetation) after December 1st and/or on frozen or snow-covered surfaces;

(b) Road use should not be granted on tracts that are located adjacent to or highly visible from other public roads or adjacent lands that are heavily used by the public.

***License Numbering:***

The number assigned to an SRULT shall be so assigned by the appropriate DNRC Land Office and these numbers shall be in consecutive order. The numbering sequence shall begin with the area office designation, followed by RU3, and finally, the appropriate consecutive number for that land office (ex: the 1st SRULT issued by the Southern Land Office would be SLO-RU3-001; the second would be SLO-RU3-002 and so on). Once an SRULT number has been assigned to an individual entity and entered into TLMS, that number shall remain the same unless circumstances dictate issuance of a new license number (ex: major changes in authorized area, within 2 or more DNRC jurisdictional boundaries, etc.). If an SRULT is renewed, the SRULT number shall be followed by the year in which the latest renewal is granted indicated in parenthesis. Ex: SRULT # SLO-RU3-002 renewed in 2005 would be SLO-RU3-002 (2005 renewal)

***License Renewal***:

The SRULT # and licensee's name is entered into TLMS at the time of issuance of the initial license. At expiration, if the licensee requests renewal of the license, a new number is not assigned. Rather, the original license number remains the same (see "Licensing Numbering" for clarification). Tracts added or deleted at renewal can be updated in the existing TLMS record. Note: for lessee notification requirements affecting renewals please see section entitled "*Lessee Notification*".

**REQUIRED Stipulations/Restrictions**

(1) Licensee shall abide by all applicable MT Dept. of Fish, Wildlife & Parks regulations pertaining to trapping or snaring activities.

(2) All other standard restrictions/stipulations are contained in the SRULT (Form DS-RU3T).